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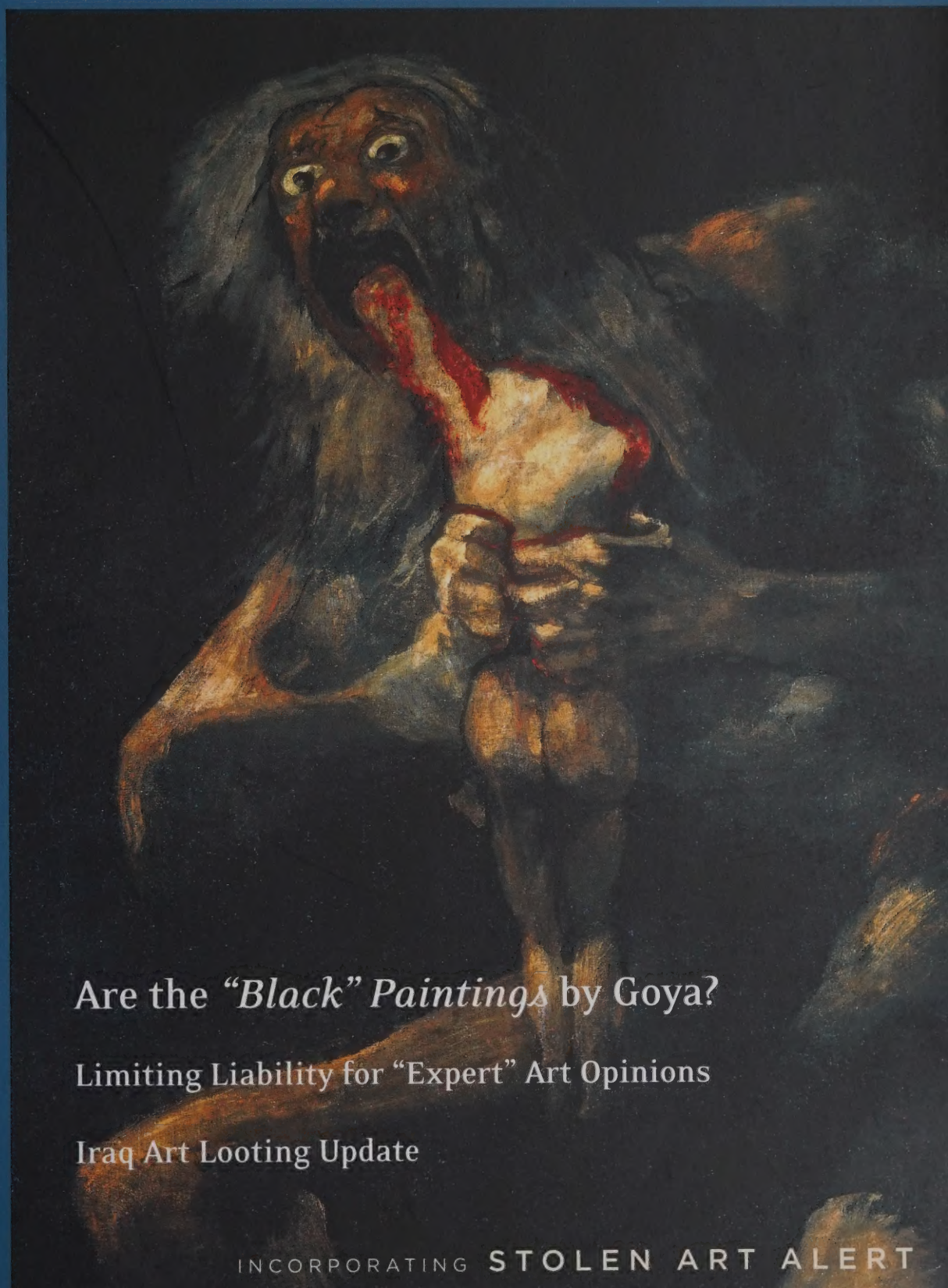

Are the *"Black" Paintings* by Goya?

Limiting Liability for "Expert" Art Opinions

Iraq Art Looting Update

INCORPORATING STOLEN ART ALERT

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IFAR Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH

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COVER: Goya, *Saturn*, (slightly cropped). Now, oil on canvas, 1.46 x 0.83 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid. See story p. 12.

U.S. ADDS RESTRICTIONS ON IMPORT OF ANTIQUITIES FROM CYPRUS AND CAMBODIA

Request from Honduras Being Considered

New Cultural Property Advisory Committee Installed

In response to requests from Cambodia and Cyprus, the United States has imposed new restrictions intended to help stem the flow of endangered cultural property from those countries into the U.S. A request by Honduras is under consideration.

Cambodia is the first country in Southeast Asia to receive U.S. protection under the 1970 UNESCO Convention on cultural property.[1] The U.S. codified that Convention (with modifications) in 1983 with passage of the Cultural Property Implementation Act (CPIA). Under this legislation, parties to the UNESCO Convention (currently 102 countries) can apply to the U.S. for help when their cultural heritage is in jeopardy of pillage.

The requests are reviewed by the Cultural Property Advisory Committee (CPAC), an advisory body within the U.S. State Department. Protection can be granted under "Emergency Action" for a three-year period, or as a "Bilateral Agreement" for five years. Terms in either category are renewable if the danger persists. Currently, in addition to Cyprus and Cambodia, the U.S. has such arrangements with: Bolivia, El Salvador, Guatemala, Italy, Mali, Nicaragua, and Peru.

CAMBODIA

The new U.S. Bilateral Agreement with Cambodia restricts the importation of certain stone, metal, and ceramic archaeological materials dating from the 6th through the 16th centuries. The five-year agreement, effective September 22, 2003, replaces weaker emergency import restrictions the U.S. put into place in 1999 and expands the categories of protected Cambodian objects.

The 1999 Emergency Action covered only Khmer stone architectural elements, including those from the temple complex of Angkor Wat, where more than a hundred temples, dating from the 9th to the 14th centuries, have been the target of looters for decades. (Angkor Wat is on the World Monuments Watch List of 100 Most Endangered Sites.) Temple carvings from Angkor, hacked off with chisels and chain saws, have entered the international market, usually smuggled through Thailand. The new legislation expands the kinds of protected Cambodian materials so as to include bronze and other metal objects, such as jewelry, sculpture, and ritual pieces; and ceramics, such as pottery, sculpture, and figurines.

> "Cambodia is the first country in Southeast Asia to receive U.S. protection under the 1970 UNESCO Convention . . ."

Under the new agreement, Khmer objects will be permitted into the U.S. only in one of two ways: 1) Together with an export certificate issued by the Government of Cambodia; or 2) with documentation showing that export from Cambodia occurred before December 2, 1999 (if it concerns a Khmer stone object covered by the previous Emergency Action), and September 22, 2003, for those archaeological materials not previously covered.

CYPRUS

Also in September, the U.S. extended the emergency restrictions imposed in 1999 on the importation of Byzantine ecclesiastical and ritual objects from Cyprus. The extension will continue for three years beginning September 4, 2003. It covers a broad range of bronze, wood, and glass objects, as well as mosaics, frescoes, painted icons, and ritual garments and textiles.

[1] The full title is: UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. It was drafted November 14, 1970.

[2] Federal Register Notice: September 22, 2003 (Volume 68, Number 183), p. 55000-55005 (for Cambodia); and August 29, 2003 (Volume 68, Number 168), p. 51903-51904 (for Cyprus). See http://exchanges.state.gov/culprop

TYPES OF ECCLESIASTIC AND RITUAL OBJECTS FROM CYPRUS SUBJECT TO IMPORT RESTRICTIONS

Figure 1. Byzantine Glass Lamp.

Figure 2. Byzantine Icon of the Prophet Elias.

Photos: Department of Antiquities, Nicosia, Cyprus.

These ethnographic and ritual objects cannot be imported into the U.S. unless accompanied by export certificates issues by the Government of Cyprus, or by documentation showing that they were exported from Cyprus before April 12, 1999, the effective date of the original emergency restriction.

This Emergency Action covering Byzantine ethnographic objects is separate from the U.S.- Cyprus Bilateral Agreement covering Pre-Classical and Classical Archaeological Material that went into force in July 2002 (see *IFAR Journal*, Vol. 5, no. 2).

Complete lists of the protected objects for both Cambodia and Cyprus were published in the Federal Register.[2]

"In July 2003, for the first time since the inaugural committee in 1984, an entirely new Cultural Property Advisory Committee was installed at the same time."

HONDURAS

The U.S. is also considering a 2001 request from Honduras for import restrictions on Pre-Columbian archaeological material, including certain categories of ceramic, stone, metal shell, and bone artifacts.

MAJOR CHANGES TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

Members of CPAC are appointed by the President of the United States and serve staggered three year terms (or until a replacement is appointed). In July 2003, as it happens, for the first time since the inaugural committee in 1984, an entirely new committee was installed at the same time. The eleven members, by law, represent four constituencies: museums (two members); the art trade/international sales (three members); the archaeological/anthropological/ethnographic fields (three members); and three representing the interests of the general public. In the list below there is one vacancy – from the museum field:

- Willard Lee Boyd (Museum)
- Joan Breton Connelly (Archaeology)
- Marta Araoz de la Torre (Public)
- Jay I. Kislak (Public)
- Robert Bruce Korver (International Sales Expert)
- Meredith J. Long (International Sales Expert)
- James Lorand Matory (Anthropology)
- Aniko Gaal Schott (Public)
- Nancy Clausen Wilkie (Anthropology)
- James Wright Willis (International Sales Expert)
- One Vacancy (Museum)

— S. F.

FRENCH COURT RULES AGAINST PINAULT IN DISPUTE OVER "FAKE" PHARAOH

A seated statue (Fig. 1), claimed by its consignor to represent the important Egyptian Middle Kingdom pharaoh Sesostris III (1878–1841 B.C.), was auctioned at the Hôtel Drouot in Paris on November 11, 1998. A subsequent lawsuit by the purchaser, alleging that it is a modern forgery and seeking revocation of the sale, has been rejected by two lower tribunals and has now been appealed to the Court of Cassation, the highest court in France. The case is far from ordinary: the statue was purchased for €780,000 by the wife of François Pinault, a billionaire businessman and the owner of Christies auction house.

"Prof. Wildung recognized this sculpture as the identical one offered to the Berlin Museum in 1981. At that time, the statue was inscribed on the sides of the king's throne."

At the first trial, all the testimony concerning the authenticity of the statue was based on stylistic considerations since the only inscription was the king's name on the belt of his kilt. The experts testifying on behalf of the French auctioneer were Elizabeth Delange, conservateur en chef with the Egyptian department at the Musée du Louvre, the compiler of the catalogue of Middle Kingdom statues in that museum,[1] and Christiane Desroches Noblecourt, a respected Egyptologist and prolific author on the subject, who had advised Mme. Pinault prior to the sale. The plaintiff's argument for revocation of the sale was made by Prof. Dr. Dietrich Wildung, director of the Egyptian Museum in Berlin, an authority on Middle Kingdom sculpture, and the author of a well-regarded volume on Middle Kingdom art.[2] Prof. Wildung recognized this sculpture as the identical one offered to the Berlin Museum in 1981. At that time, the statue was inscribed on the sides of the king's throne (Fig. 2), but so unconvincingly that the writing was immediately rejected as patently fake. The Berlin authorities, including Prof. Dr. Jürgen Settgast, then director of the museum, also deemed that the quality of the carving was inconsistent with the high standards normally associated with royal statues of late Dynasty XII; nor did the statue resemble excavated or well-attested examples of Sesostris III statuary. The judge, while accepting that the inscription was erased after being examined in Berlin, found that this fact did not necessarily demonstrate that the statue was a forgery. He also was unconvinced, presumably based on Wildung's testimony, that the statue represented Sesostris III. Nevertheless, he accepted the French experts' assertions that the work was ancient and possibly represented a cult statue of that king from the succeeding dynasty. There being no other known examples of cult statues of Sesostris III from that time, many Egyptologists find this explanation suspect. An appeals court heard testimony from a conservator employed by Pinault, who stated that the statue displayed signs of modern tool marks. But the court declined to overturn the verdict on that basis, finding that this evidence should have been introduced in the lower court.

This lawsuit illustrates the difficulties encountered by courts adjudicating authenticity disputes where experts disagree and conclusive forensic evidence is lacking. Without the persuasive scientific tools available to a painting conservator such as pigment analysis, x-rays, and radio carbon dating, the surface anomalies noted by Pinault's expert witness, which he believed were modern tool marks, can be dismissed by a court as inconclusive even if this testimony were allowed, since the possibility of some re-carving on an otherwise

Figure 1. Statue, H. 57 cm, granodiorite(?), purportedly pharaoh Sesostris III, purchased at auction in Paris, November 1998, and now the subject of an authenticity dispute.

[1] *Catalogue des statues égyptiennes du Moyen Empire* (Paris, 1987).

[2] *Sesostris und Amenemhet. Ägypten im Mittleren Reich* (Fribourg/Munich, 1984).

ancient sculpture cannot be entirely discounted.

It must be a serious embarrassment to the owner of one of the premier auction houses whose wife may have bought a forgery at a competitor's sale. In the present environment, the antiquities collector must be keenly aware of provenance, not only to ensure that an object may be legally acquired, but to limit the possibility that it was made in recent times. The sudden appearance of such an important royal statue in the art market should give the buyer pause. While the authenticity of the statue remains moot, its value is clearly dramatically diminished, and apparently, the Musée du Louvre has declined to accept its donation.

Figure 2. Photo showing the inscriptions that were present when the statue was offered to the Berlin Museum in 1981, but were erased some time prior to the auction.

JACK A. JOSEPHSON
EGYPTOLOGIST;
CHAIRMAN, IFAR

SUPREME COURT DECLINES TO HEAR SCHULTZ APPEAL

His Prison Term Continues

So Does Broad NSPA Interpretation of Theft

The U.S. Supreme Court refused in January to hear the appeal of antiquities dealer Frederick Schultz.[1] Thus it lets stand a lower (Second Circuit) court decision convicting Schultz of conspiracy to sell antiquities taken out of Egypt in violation of that country's cultural property ownership laws. Schultz is currently serving a 33-month term in federal prison.

The controversial and highly publicized case, much discussed in *IFAR Journal* (see Vol. 4, nos. 2&3; Vol. 5, no.4; Vol. 6, nos.1&2), has major implications for the U.S. antiquities market. The case involved an elaborate scheme to export from Egypt and then sell antiquities for which Egypt claimed ownership under its 1983 patrimony law. Schultz' co-conspirator, Jonathan Tokeley-Parry, served a three-year prison term in England prior to the Schultz trial and was the U.S. government's star witness against Schultz, the former President of the National Association of Dealers in Ancient, Oriental, and Primitive Art.

Schultz was convicted of violating the National Stolen Property Act [NSPA] (Title 18, US Code, Section 2315). A key issue at his trial – and in his petition to the Supreme Court for a hearing (a writ of certiorari) – was the question of whether Egypt's 1983 patrimony law, which claims ownership of all antiquities found in Egypt – documented or undocumented – constituted ownership as defined by our own NSPA. In other words, was the NSPA (enacted in 1934) designed to apply to objects that another country considers "stolen" solely because that country claims ownership of *all* objects in its soil. Schultz argued "no," but the lower courts disagreed and applied the reasoning of *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977). In that (still controversial) 1977 decision, New Mexico's Fifth Circuit applied a broad definition of the term "stolen" to artifacts imported into the U.S. from Mexico in violation of a Mexican patrimony law similar to Egypt's.

Now that the Supreme Court has chosen not to hear the appeal, and two Circuit Courts (the Fifth Circuit in New Mexico and the Second Circuit in New York) have ruled, it seems clear that the NSPA can apply to at least some foreign patrimony laws.

— S. F.

[1] Supreme Court (No.03-592). Petition Denied, January 12, 2004. Frederick Schultz, Petitioner v. United States. Lower Court: U.S. Court of Appeals for the Second Circuit (02-1357), June 25, 2003.

WILL THE REAL ROCKWELL KENT PLEASE STEP FORWARD

As part of its long-standing effort to alert people to issues involving fake or misattributed works, IFAR calls your attention to a confusing situation concerning the American artist and illustrator, Rockwell Kent (1882-1971). It seems that more than one artist has that name. Thus, people acquiring a work signed "Rockwell Kent" may not be getting what they expect.

Scott R. Ferris, who has been compiling a catalogue raisonné of Kent's work, has asked us to publish the following letter:

> "Numerous works signed 'Rockwell Kent' continue to be attributed to and sold as creations produced by the renowned artist, author, adventurer, and socio-political activist. I have identified one such creative Rockwell Kent during the process of researching a third but less inventive man by the same name, the artist's cousin, Percy Rockwell Kent.
>
> Percy Rockwell Kent (1900-1947) – also known as Rockwell Kent – was a professional banker but not an artist or author, according to his three children and the public record. As a young man he dropped his Christian name in favor of his middle name, Rockwell . . . He was a first cousin of the artist Rockwell Kent . . .
>
> A third Rockwell Kent (1858-1934) has recently been identified as an author and amateur artist. This Rockwell Kent, of Brooklyn, New York, was . . . an amateur oarsman with the Nonpareil Rowing Club of New York during the 1870s and 80s. By profession, he was a proofreader, employed by several New York City newspapers . . .
>
> The professional artist Rockwell Kent confirmed his knowledge of this other [Brooklyn] Rockwell Kent in a March 17, 1970 letter, in which he wrote: 'There appears to be a rash of Rockwell Kents in the world, and as far as I can make out, many of them quite unrelated to me.' He goes on to say that 'there was a Rockwell Kent in Brooklyn years ago. I came into correspondence with him . . .'
>
> According to the Brooklyn Rockwell Kent's obituary, he lived with his wife, Sara Sloane Kent, at 1198 Pacific Street. This address also appears on the verso of a combined nautical image (signed 'R. Kent,' lower right) and handwritten poem titled, 'Argosy!' (signed in full). While Sara Sloane Kent's relationship to Rockwell is noted in his obituary, her signature also appears alongside his on a handcrafted greeting dated Christmas 1922. This greeting includes an illustration of a cornucopia (signed 'R. Kent') and a typed poem titled, 'Hosea, x, 12.'
>
> There exists in the Rockwell Kent (1882-1971) Collection, Rare Book and Manuscript Library, Columbia University, two hand-bound manuscripts of poems by Rockwell Kent (1858-1934) that had been attributed to Percy Rockwell Kent. One of these manuscripts, dated Christmas, 1929, is dedicated to the author's sister Charlotte Kent (Percy's sister's name was Virginia) and the second to his niece, Dorothy Ruth Kent Bennett. These compilations include poetic references to the family, including 'To Sara' and 'Grace Carolyn Sloane,' as well as the poem 'Argosy!,' mentioned above, and 'King Street.'
>
> The print and poem, 'King Street,' included in the collection at Columbia, had been attributed to the professional artist Rockwell Kent (1882-1971) in Dan Burne Jones's, *The Prints of Rockwell Kent: A Catalogue Raisonné* (#154). A fourth work of art (without poem), inscribed 'Oak Street, New York' (signed 'R. Kent' lower right), bears stylistic similarities to 'King Street.' It is my opinion that the handwriting and signatures that appear on all four works is the same.
>
> Based upon the evidence outlined above, I conclude that the artwork discussed was created by Rockwell Kent (1858-1934) of Brooklyn. I caution, however, that I have inspected additional artwork signed 'Rockwell Kent' that I would not attribute to *any* of the Kents cited above. Research identifying these other artists is ongoing."
>
> SINCERELY,
> SCOTT R. FERRIS

EL GRECO RETURNS TO CRETE

Painting Departs from Met Exhibition
Federal Immunity Protects it from Seizure
Lender Pulls Work from Next Stop in London

For the second time in only a few months, the Federal Immunity from Seizure Act ("FISA"22-U.S.C. §2459) has been invoked to dismiss a lawsuit that would have kept a major art work from being returned to its foreign lender.

Last summer the Los Angeles County Museum of Art (LACMA) turned to FISA when an heir to a Russian collector sued to block a loan exhibition of 25 works from the Pushkin Museum in Moscow (see *IFAR Journal*, Vol 6, nos. 2&3). The suit was withdrawn and later formally dismissed after the U.S. government filed a motion on the museum's behalf.[1]

And this January, an El Greco painting of *Mt. Sinai* was returned to a museum in Crete after a New York State court dismissed a Holocaust-related claim that tried to keep it in the U.S. at the end of a three-month stay at the Metropolitan Museum. The suit was rejected because the painting had been granted immunity from seizure by the federal government when the exhibition – an El Greco retrospective – was first organized.

The government's action in both cases reinforced the purpose of the FISA (enacted in 1965): to encourage foreign loans of works of "cultural significance" and thereby "assist and encourage educational and cultural interchange." If a museum applies for and is granted protection by the U.S. State Department when it is organizing a temporary exhibition involving foreign loans, the immunity protects the museum from any judicial process that might deprive it of custody or control of the work during the loan period. (The Museum of Modern Art in New York had not applied for federal immunity when organizing its 1997 Egon Schiele exhibition. Thus, Schiele's *Portrait of Wally*, lent by a foundation in Austria, was not shielded when the U.S. Government initiated civil forfeiture proceedings. The painting is still in the U.S.)

An upshot of the El Greco decision was that since such immunity was not available at the next venue – the National Gallery of Art in London – the lender pulled the painting and had it sent back directly to the Historical Museum in Crete.

Although FISA protected both the Met and LACMA, the grounds for the lawsuits differed. The LACMA suit was

> **"The suit was rejected because the painting had been granted immunity by the federal government when the exhibition. . . was organized."**

brought by an heir to Sergei Shchukin, a renowned Russian collector whose artworks were nationalized by the Soviet Union after the Russian revolution. (That nationalization was made known to the State Department when immunity was requested.) Invoking FISA, the Los Angeles museum blocked the suit.

The El Greco case concerned a Holocaust claim. The suit stated that the *Mt. Sinai* had been "stolen from the Hatvany collection of Hungary . . . by the Nazis at the end of World War II,"[2] and asked that the work be kept in New York to study its provenance, condition, authenticity, and value. The request was denied and the case dismissed, because of FISA.

---

[1] Andre Marc Delocque-Fourcaud v. The Los Angeles County Museum of Art, Defendant, and United States of America, Defendant-in-Intervention. U.S. District Court, Central District of California, Western Division. No. CV-03-5027-R (Ctx)

[2] Joram Deutsch v. Metropolitan Museum of Art; Heraklion Foundation. Supreme Court of State of New York, County of New York, Index #04100902, January 20, 2004.

[3] Although in 1962 the El Greco scholar, Harold Wethey, questioned whether this painting was one and the same with the work listed in the inventories of the Orsini and Farnese collections, it is now generally accepted that it is, and Wethey, himself, acknowledged as much in 1984 (see Harold Wethey, "El Greco in Rome and the Portrait of Vincenzo Anastagi," *Studies in the History of Art. El Greco Italy and Spain*, National Gallery of Art, Vol. 13, 1984, pp. 171-177.

MT. SINAI

The painting, showing the Monastery of St. Catherine and the three peaks of *Mt. Sinai*, is a small oil and tempera on panel. An early work, it was painted c.1570, not long after El Greco (1541-1614) left his native Crete for Italy. (He actually spent most of his career in Spain.) It is the only El Greco painting now in Crete, having entered the collection of the Historical Museum, located in the capital city of Herakion, in 1990.

Before that, the work followed a labyrinthine path with many distinguished homes. This included the collections of the Orsini and Farnese families in Rome in the 17th century.[3] Centuries later, after changing hands several times, around 1921, the painting entered the collection of Baron Ferenc Hatvany in Budapest. The Baron amassed one of the largest art collections in Hungary but was forced into hiding in 1944 after the Nazis invaded Hungary. He left the country in 1947 with two of his daughters and died in exile in 1958. It is unclear what happened to his collection, which during the war was deposited for safekeeping in a Budapest bank. The collection was apparently looted around 1944. Some of the works are assumed to be in Russia, and 15 (including Courbet's "Wrestlers") are known to be in Hungarian museums. They are now being claimed by Hatvany heirs.[4]

"The post-war travels of *Mt. Sinai* are even cloudier, with several conflicting reports. It is not clear who stole it or whether it was taken to Germany or to Russia . . ."

DISPUTED POST-WAR OWNERSHIP

The post-war travels of *Mt. Sinai* are even cloudier, with several conflicting reports. It is not clear who stole it or whether it was taken to Germany or to Russia, or, most importantly, whether it was returned to the family after the war. A recent book on the looting of art from Hungarian collections suggests that it went to Russia,[5] and then was "bought back from corrupt Soviet army officers in 1947," after which it was in "unknown hands in Hungary" until the first few years of the 1960's, when it was "smuggled out of Hungary." By 1974 it was in an unspecified "private collection" in Vienna. But that, of course, was not its final destination.

The suit against the Metropolitan Museum suggests a different scenario. It was filed not by the Hatvany family, but by Joram Deutsch of Geneva, Switzerland. He is the son of a deceased lawyer who represented the Hatvany family and other Holocaust claimants for years. His lawsuit charges that the work did not go to Russia and, therefore, was not "bought back" from there to Hungary. Rather, it was: "transported from Hungary to Berlin and/or Munich; then the painting showed up in Vienna in the 1970's or 1980's." After that, the suit states, "the painting was illegally transported out of Austria to London by having customs declarations and statements listing the painting as a 'fake'; then the painting was 'sold' – 'transferred' – in London through a 'private auction' to the defendant Heraklion [Foundation] in Greece in or about 1989/1990" (p. 22).

The Deutsch suit goes on to assert that the painting did not surface publicly "during the 1950s, 1960s, 1970s, 1980s, or 1990s [because] it would have been easily spotted and seized." It surfaced in 2003, the suit suggests, only because the senior Mr. Deutsch died in 2002 and the current owners thought "it was safe to transport the painting out of Greece."

In fact, the painting was shown at a major exhibition in Venice in 1981, where 'Franz Hatvany' was listed in the provenance,[6] as well as at exhibitions in 1989, 1990, and 1999. In 1988,

---

[4] See the Commission for Looted Art in Europe, "Hungary, The Hatvany Collection": http://www.comartrecovery.org/

[5] See, Laszlo Mravik, *The 'Sacco di Budapest' and Depredation of Hungary, 1938-1949*, (Budapest: Hungarian National Gallery, 1998), No. 16830, who gives the provenance as follows: "Deposited in 1942 at the HGCB (Chest No. III), under the name of J.H. Taken by the SEOC. Bought back from corrupt Soviet army officers in 1947. In unknown hands in Hungary. Smuggled out of Hungary c. 1960-3. A private collector in Vienna. Auctioned Sotheby's 1988. Now Historical Museum, Iraklion."

[6] *Da Tiziano a El Greco. per la storia del Manierismo a Venezia*, 1540-1590. Exh. cat. Palazzo Ducale, Venice, 1981, No. 100. "Franz Hatvani, Budapest" was the last owner listed in the provenance.

[7] See Harold Wethey, *El Greco and his School. Vol. II. Catalogue Raisonné*. Princeton University Press, 1962, pp. 198-200, under "Paintings: School Works, Copies and Wrong Attributions." See also, Wethey, *op. cit.*, 1984, p. 174.

the painting was included (and apparently not sold) in a Sotheby's auction in London (December 7, 1988; no. 84). The consignor was listed as "Private collection, Vienna," and its previous owner as "Baron Hatvany, Budapest." Not long after that, the work was sold to the present owner in Greece.

Deutsch's contention that the work was smuggled out of Austria as a "fake" might be related to the fact that Harold Wethey's 1962 El Greco catalogue raisonné had questioned *Mt. Sinai*'s attribution to El Greco. Calling the work a "Pseudo El Greco, ca. 1550," Wethey listed its location at the time as "unknown." By 1984, however, after the work had resurfaced, Wethey changed his mind and referred to the painting as "*by* El Greco."[7]

El Greco, *Mt. Sinai*, c. 1570. Oil and tempera on panel, 41 x 47.5 cm. Coll. Historical Museum of Crete, Heraklion.

As with so many other World War II art ownership claims, postwar documentation about the El Greco appears to be conflicting and thin. But because of the immunity statute protecting U.S. museums when a work is on loan from a foreign country, this dispute will have to proceed in Europe.

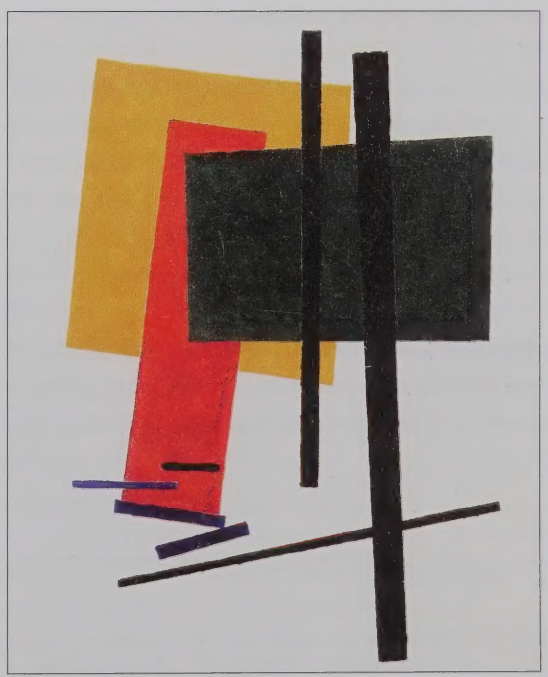
— S.F.

MALEVICH HEIRS BATTLE AMSTERDAM IN U.S. COURT

Claim Ownership of 14 Works Lent to U.S. Museums

A lawsuit filed in January in U.S. District Court in Washington pits the heirs of the Russian artist Kasimir Malevich against the Stedelijk Museum in Amsterdam. The heirs claim that they and not the museum are the legal owners of 14 Malevich paintings, estimated in the suit to be worth upwards of $150 million dollars, that were recently loaned by the Stedelijk to two museums in the U.S.

In the suit, the heirs say that the loan of the paintings constitutes a "commercial activity" in the U.S. that removes the City of Amsterdam, which owns the Stedelijk, from the protection against lawsuits in the U.S. that would have normally been afforded it under the Foreign Sovereign Immunities Act (FSIA) (28 U.S.C. §§1605-7) .



KASIMIR MALEVICH, *Suprematism*, 1915. Oil on canvas, 17 1/2" x 14" (44.5 x 35.5 cm). Coll. Stedelijk Museum, Amsterdam, A7675. One of the fourteen paintings loaned by the museum for exhibitions in New York and Houston.

"The heirs say that the loan of the paintings constitutes a 'commercial activity' in the U.S. that removes the City of Amsterdam, which owns the Stedelijk, from protection against lawsuits in the U.S. . . ."

Malevich was a great Russian avant-garde artist who died in 1935. The fourteen Malevich paintings were loaned for exhibitions in New York and Houston. The suit was brought on behalf of the thirty-five living heirs of Malevich. (Two of the heirs are citizens of the United States.) It alleges that the Stedelijk, a government museum, wrongfully acquired the paintings in 1958, "in violation of international law," from the estate of Hugo Häring, to whom the works had been entrusted by Malevich. The suit asserts that Häring did not own the works and, therefore, had no legal right to sell them.

The Malevich heirs have attempted for years to recover the 14 works, plus the dozens of others works comprising the 84 Malevich works (paintings, gouaches, and drawings) in the Stedelijk Collection. Talks broke down in 2001 when Amsterdam formally rejected their claims.

The temporary loan of the 14 works to the U.S. opened the door slightly for the Malevich heirs. Their suit was filed on January 9, two days before the close of the "Kasimir Malevich: Suprematism"[1] exhibition, which had toured the U.S. It was this, the Claim asserts, that constituted the "commercial activity" that removed the protection of the FSIA .

The Foreign Sovereign Immunities Act of 1976 is designed to immunize foreign governments from lawsuits in the United States. But there are certain exceptions which allow cases to go forward. One is the "expropriation exemption." This provides that a foreign state – or political subdivision (such as Amsterdam) – loses immunity from a suit:

> ". . . in which rights in property taken in violation of international law are in issue and that property . . . is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property . . . is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States . . ."

This is the exception to the FSIA that was invoked and upheld in California federal court last year in the case of Altmann v. Republic of Austria (see *IFAR Journal*, Vol. 5, nos. 2 & 3). That case concerns six paintings by Gustav Klimt currently in the collection of a museum in Vienna and claimed by a California resident whose family left Austria because of the Holocaust and owned the works before World War II. Austria appealed the decision that allowed the case to go forward in the U.S., and the case is now under review by the Supreme Court. A decision is expected by June 2004. To the extent that the legal grounds for suing in the U.S. are the same for the two cases, although the other circumstances are different, the Court's decision in Altmann, depending on how it is worded, may affect the Malevich suit.

The Malevich suit does not attempt to keep the 14 works in the U.S.; nor does it target either of the two U.S. museums exhibiting the paintings (the Guggenheim and the de Menil). The paintings, in fact, have already been returned to Amsterdam. The Guggenheim Museum applied for and received immunity from the State Department (under the Federal Immunity from Seizure Act) when it organized the Malevich show (see previous story: "El Greco Returns to Crete"). Such immunity protected the two museums and the works from judicial seizure while on loan.[2] The U.S. exhibit simply provided the Malevich heirs, if the courts agree, with the needed exception to the Foreign Sovereign Immunities Act to enable them to sue Amsterdam in the U.S.

[1] "Kasimir Malevich: Suprematism," Deutsche Guggenheim, Berlin, January 14 - April 27, 2003; The Guggenheim Museum, New York May 13 - September 7, 2003; The Menil Collection, Houston, October 3, 2003 - January 11, 2004.

[2] Protection under the Act goes beyond seizure to include "any judicial process . . . for the purpose of or having the effect of depriving" the exhibiting institution of "custody or control" of a cultural object.

THE ODYSSEY OF THE MALEVICH PAINTINGS

In 1927 Malevich took more than 100 works to Berlin to exhibit at the Grosse Berliner Kunstausstellung (The Great Berlin Art Exhibition). When he was unexpectedly called back to Russia, the artist, intending to return, left the works with friends and colleagues in Germany for safekeeping.

The lawsuit asserts that the works were not subsequently shipped to him in Russia because Stalinist "condemnation of abstract art would undoubtedly have led to their confiscation and destruction." Malevich died in Russia only a few years later, in 1935, penniless, leaving a wife and five children. There was no will. Between 1935-38, some of the art made its way to museum collections in the U.S.

NOT THE FIRST MALEVICH CLAIM IN THE U.S.

In 1999, Malevich's heirs made a claim to the Museum of Modern Art in New York. That suit was settled when MoMA returned one painting to the family and paid an undisclosed amount (believed to be approximately five million dollars) in exchange for 15 other Malevich works that it had held "on loan" since the 1930s.

Another claim was made to the Busch-Reisinger Museum at Harvard in 1999, and that institution, too, resolved the claim amicably. It returned the two works that it had gotten "on loan" for the benefit "of the rightful owners," through the bequest of Alexander Dorner, one of the men to whom Malevich had entrusted his works. One of the paintings returned by the Busch-Reisinger was put up by the Malevich heirs for auction at Sotheby's, New York in May 2003 (Lot 35, *Suprematist Painting, Rectangle and Circle*, 1915), with an estimated sales price of $5 - $7 million, but it failed to sell. In contrast, the painting returned to the heirs by MoMA (*Suprematist Composition*) brought $17 million at auction at Phillips in May 2000.

[3] For a summary (in Dutch) of the College of Mayor and Aldermen's decision of September 4, 2001, see the sub-head "Cultuur" on the City of Amsterdam's Website: http://www.amsterdam.nl/asp/get.asp?PosIdt=00002779&ItmIdt=00001111&SitIdt=0.

"Unlike MoMA and the Busch-Reisinger, the Stedelijk rejected the family's previous requests. In September 2001, it asserted that its acquisition of the Malevich Collection was valid . . ."

THE SUIT AGAINST THE STEDELIJK

Unlike MoMA and the Busch-Reisinger, the Stedelijk Museum rejected the family's previous requests. In September 2001, the Stedelijk asserted that its acquisition of the Malevich Collection was valid at the time it was acquired in 1958.[3] Furthermore, it claimed that it had also acquired ownership in 1993 through "acquisitive prescription" (the Statute of Limitations), under Article 3:105 of the Dutch Civil Code.

The heirs contend that the Stedelijk did not acquire the works legally. They say that Hugo Häring, the architect to whom Malevich entrusted the works, had no legal right to "sell" them to the Stedelijk. Moreover, they note, during the almost 30 years that he was responsible for the works Häring, himself, had declared repeatedly that he was not their owner, merely their trustee.

The suit goes on to assert that the Stedelijk "conspired and colluded" with Häring's brother-in-law, a notary and an attorney, to take advantage of Haring when he was a sick and elderly man, to get him to sign documents in 1956 declaring his ownership of the works (under the German doctrine of acquisitive prescription). He was then persuaded to lend the works to the museum, with an option for the museum to buy them. The museum subsequently exercised its option to purchase the paintings in 1958 upon Häring's death, 23 years after the death of Malevich.

The Complaint was served on the City of Amsterdam in early February. The City has 60 days to respond .

— S. F.

ARE THEY GOYA'S "BLACK" PAINTINGS ?? — YES!*

PRISCILLA E. MULLER**

Figure 1. Goya, *Saturn*, now, oil on canvas, 1.46 x 0.83 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid.

"Their enigmatic and disturbing subject matter has served as a magnet to scholars . . ."

Eyes bulging as a brilliant light exposes his cannibalism, a gray-bearded ancient – long described as "Saturn" – gorges upon a tiny mature human (Fig. 1). Strikingly modern in conception and instantaneity, this appalling vision and thirteen other so-called *"Black" Paintings* originally decorated the walls of two rooms at the *Quinta del Sordo* (Deaf Man's Country Property), the estate outside Madrid owned by Francisco de Goya from 1819 until 1823 (Fig. 2). When seen today in the Prado Museum, Madrid, they project an extraordinary impression of Goya's late work. Yet the *"Black" Paintings*, like Goya's approximately contemporaneous prints known as the *Disparates* or *Proverbs*, were not documented by Goya or others in his lifetime. Both series remained all but unknown for some three decades following Goya's move to France in 1824 and his death in Bordeaux four years later. As a result, their enigmatic and disturbing subject matter has served as a magnet to scholars seeking to unravel their meanings.

But not until now, when to question the canon of a major artist's *œuvre* has become a newsworthy sport, has Goya's authorship of the *"Black" Paintings* been challenged, as it has been, by Juan José Junquera, a professor of 18th-century decorative arts at the Complutense University, Madrid. His rejection of the *"Black" Paintings* as works by Goya is different from the recent dismissals of admired canvases routinely accepted as Goyas, such as *The Milkmaid of Bordeaux* and *The Colossus* (Madrid, Prado Museum), *Isabel Porcel* (London, National Gallery), and the *Majas on a Balcony* (New York, Metropolitan Museum of Art). If Junquera's contentions are sanctioned, yet another, even grander achievement would be eliminated from

* Author's Note: This article results from a conversation with Sharon Flescher, Editor-in-Chief of the *IFAR Journal*, concerning a recent challenge to Goya's authorship of the "Black" Paintings as summarized by Arthur Lubow in "The Secret of the Black Paintings": "Who painted Goya's most celebrated work? According to a provocative new study, it may not have been Goya." (*The New York Times Magazine*, July 27, 2003, pp. 24-27). Since I had published an in-depth study of the paintings (*Goya's "Black" Paintings, Truth and Reason in Light and Liberty*, New York, 1984), Dr. Flescher invited me to share a response with Journal readers.

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our appreciation of Goya's unmatched visionary genius.

THE *"BLACK" PAINTINGS*

For at the Quinta, as nowhere else, were scenes from a past so darkly re-imagined in near life-size by so expert and urgent a handling of brush and pigments. From the *"Saturn"* (Fig. 1) and *Judith* (Fig. 3) who confronted those entering the lower Quinta room - both figures struck by light while staging their bloody roles, one a destroyer of humanity, the other its savior – to the *Cudgel Fight* (Fig. 4) in the second room, in which neither combatant could seem to win, Goya set forth themes of venom and darkness. Yet the imagery was hardly without precedent in Goya's early paintings, prints, and drawings. We might, for example, recall a sword-wielding Judith and a devouring Saturn.[1]

Much about the *"Black" Paintings* – and Goya's life – is a mystery. When Goya purchased his country estate in 1819, he was 76 and deaf. Soon after, he was dangerously ill. Yet he was still official Court Painter. But his political leanings, as much as we know of them, were liberal, and he supported the liberal Constitutional government that briefly existed from 1820 to 1823. The fourteen works comprising the *"Black" Paintings* were painted directly on the plaster walls – *al secco*, not fresco – of two rooms of the Quinta house. Unsigned and undated, they were not officially commissioned. There are no extant written comments about the works from Goya's lifetime – whether by him or anyone else. Only two relatively contemporaneous accounts exist, and the first published account with illustrations did not appear until 1867. In the 1870s, the house was sold, and the new owner had the works hacked off the Quinta walls and transferred to canvas.

Figure 2. (above) The Goya *Quinta* House, ca. 1900. From a photograph by Asenjo reproduced in *La Ilustración española y americana*, XXVI (July 15, 1909), p. 19.

Figure 3. Goya, *Judith and Holofernes*, now, oil on canvas, 1.46 x 0.84 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid.

Thus the *"Black" Paintings* suffered considerably. They were already in lamentable condition when appraised during the 1850s by, among others, Goya's follower and imitator, the Madrid painter Eugenio Lucas Velázquez. Prints by Maurand reproduced in Charles Yriarte's 1867 book on Goya[2] and by Eduardo Gimeno (who worked

Figure 4. Goya, *The Cudgel Fight*, now, oil on canvas, 1.23 x 2.66 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid.

[1] Illustrated in Pierre Gassier and Juliet Wilson, *The Life and Complete Work of Francisco Goya, with a catalogue raisonné of the paintings, drawings and prints*, New York, 1971, cat. nos. 636, 635.

"His conclusion that the paintings are not by Francisco de Goya but by his son, Javier, rests essentially . . . on reinterpretations of known archival materials. . . . Is there any substance to Junquera's reattribution of the *"Black" Paintings?"*

from his own oil sketches of the paintings), which appeared in 1869,[3] illustrate some of the condition problems. Later photographs by J. Laurent better reveal accrued damages and restorations, as do X-rays and technical analyses of the paintings as they survive. Their removal from the Quinta walls and transfer to canvas during the early 1870s by the painter and Prado Museum restorer, Salvador Martínez Cubells, also entailed considerable restoration and reworking. Then, in 1878, a new owner of the Quinta sent the canvases to Paris for exhibition at the Exposition Universelle, where, poorly placed, they received little attention. Thus, they were brought back to Spain, and eventually entered the collections of the Prado Museum.

With conditions and interventions that have disturbed the integrity of the compositions well recorded, a corpus of data has been available to all who probe the *"Black" Paintings*. And, interventions aside, Goya's creation of the paintings is sustained, not only on the basis of connoisseurship – admittedly subjective – with or without consideration of technical analyses, but also, as I will demonstrate below, on understanding the rationale of the artistic program conceived for the Quinta rooms.

JUNQUERA'S ARGUMENT

Commissioned to produce a book on the *"Black" Paintings*, Professor Junquera's background in the decorative arts and his familiarity with archival sources for 18th-century decoration led him to review, and reinterpret, documentation relating to Goya and his family. His conclusion that the paintings are not by Francisco de Goya but by his son, Javier, rests essentially not on new intelligence but on reinterpretations of known archival materials.

In June 2003, in an effort to "move things along" as publication of his book seemed stalled,[4] Junquera published his declaration that the *"Black" Paintings* are "fake paintings."[5] The ever alert Madrid press seized upon this sensational revelation, though not without soliciting the contrary opinions of others, foremost among them the respected British scholar of Spanish literature and of Goya's work, Nigel Glendinning. The ensuing imbroglio continues, reinforced by attention given the more recently published *Goya* by Robert Hughes, who in fact regards the challenge to Goya's authorship of the *"Black" Paintings* a "non-issue," though he believes the paintings to have been "most private" to a Goya "talking to himself" alone.[6]

With Junquera's *The Black Paintings* of Goya nearing publication in English,[7] news of the controversy reached readers of the *New York Times Magazine* in July 2003 with Arthur Lubow's enticingly titled "The Secret of the Black Paintings: Who painted Goya's most celebrated work? According to a provocative new study, it may not have been Goya." On summarizing the already heated situation, Lubow quoted Junquera's persistent, undaunted avowal (soft-pedaled in his book) that

[2] Charles Yriarte, *Goya: sa biographie, les fresques, les toiles, les tapisseries, les eaux-fortes et le catalogue de l'œuvre*, Paris, 1867.

[3] In *El arte en España-VIII* (Madrid, 1869).

[4] Junquera admitted this to Arthur Lubow. See Lubow, *NYTimes*, p. 27.

[5] Juan José Junquera, "Las pinturas negras bajo sospecho...," *Descubrir el Arte*, V-51, pp. 22-32; text also on the internet: www.miguel@almendron.com.

[6] Hughes, in "The Unflinching Eye," *The Guardian*, 4 October 2003, and as quoted in a review of his Goya in *The New York Times*, November 7, 2003.

[7] Juan José Junquera, *The Black Paintings of Goya*, London (Scala), 2003.

Goya's son, Javier, rather than Goya himself, was responsible for the *Quinta* wall paintings.

Brought to a wider audience, this disquieting and controversial hypothesis has baffled some, and spurred others. A New York artist went so far as to give Junquera's new book an award for "the Worst Art Dead or Alive, Blunders and Art-rageous Attacks against Art and Artists," exhorting that Junquera's "blustering babble" be banished to the "dustbin of *Art History*."[8]

Is there any substance to Junquera's reattribution of the *"Black" Paintings*? Since he maintains that others have interpreted the Goya documentation erroneously, let us, in turn, examine some of *his* arguments. These depend largely upon his "new" readings, or interpretations, of materials which he argues were previously misunderstood: archived documents involving Goya, his family and the Quinta property; references of the 1830s-1860s to the Quinta wall paintings; and visual evidences and comments (or lack thereof) from the 1860s through the ensuing decades.[9]

THE 1830 DOWRY

Junquera's hypothesis that Javier, and not his father, created the Quinta wall paintings is derived largely from his reading of a December 9, 1830 dowry document which lists the assets of Javier's son, Mariano, at the time of his marriage and omits mention of the *"Black" Paintings*.[10] But, is this significant?

On September 17, 1823, as the liberal Spanish Constitutional Government that Goya had supported – and to which he had pledged his allegiance – was threatened, Goya transferred ownership of the Quinta property to his only grandson, 17-year-old Mariano. Within weeks, the liberal government fell on October 7 and the despotic King Ferdinand VII was reinstated. During the early months of 1824, Goya took shelter in quiet isolation with a friend in Madrid, José Duaso y Latre. Evidently, Goya's long exercised skill in evading royal and Inquisitional censure had been sorely tried while Spain enjoyed respite from absolutist rule. On May 2, a day after Ferdinand declared an amnesty for liberals who had sympathized with the Constitution, Goya, still officially Court Painter, asked permission to leave for France, allegedly for health reasons. Royal permission was granted on May 30, and by June 24 he had reached Bayonne en route to Paris. Soon after, he settled in Bordeaux and remained there until his death in 1828. He revisited Madrid only twice.

When Mariano in 1823 gained ownership of the Quinta, which Goya had much improved at notoriously great expense,[11] he was quite possibly the beneficiary of his grandfather's wish to shield the property and its potentially incriminating decoration from repressive authorities. Then, some two years after Goya died, Mariano, on May 3, 1830, apparently transferred ownership to his father, Javier.[12] But on December 9, 1830, the property was included in Mariano's dowry.[13] Junquera argues that because the Quinta wall paintings were not mentioned in the dowry they cannot have existed in 1830. Consequently, he concludes, they must have been painted later, and by Javier. However, I would argue that since the *"Black" Paintings* were *integral* with the walls of the house – unlike household items and other valuables listed in the dowry, such as productive almond trees that Goya and Mariano had planted, or small (and movable) paintings – they need not have been separately registered.

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[8] See Robert Coane's Website: www.atelier-rc.com/Atelier.RC/Caramel.html.

[9] Junquera, "Las pinturas negras...," p. 23, and *The Black Paintings...*, pp. 24-50.

[10] Since it is not among Goya-related documents published earlier (Marqués del Saltillo, *Miscelanea madrileña....Goya en Madrid, su familia y allegados* [1746-1856], Madrid, 1952), and only briefly described later (Antonio Matilla Tascón, "La familia de Goya en el Archivo Histórico de Protocolos de Madrid," *Villa de Madrid*, XVI-59 (1978-II), pp. 32-33, the dowry has not been widely accessible.

[11] Saltillo, pp. 16-17; and as described in the document (Madrid, Archivo Histórico de Protocolos, P.° 22886).

[12] Saltillo, pp. 16-17; without specific citation of the 1830 transfer of ownership document. Neither does Junquera, who mentions the transfer of the Quinta from Mariano to his father as occurring after Mariano's marriage (in December 1830), cite his source (Juan José Junquera, "Los Goya: de la Quinta a Burdeos y vuelta," *Archivo español de arte*, LXXVI-304 (October-December 2003) p. 354.

[13] Madrid, *Archivo Histórico de Protocolos*, P.° 22887

It's true that Javier may have made "improvements" to the Quinta (which he mortgaged in September 1832) after he legally acquired (or reacquired) it, and very probably enjoyed its use, and perhaps participated in its modifications, before and after Goya's move to France in 1824.[14] He may possibly, though not certainly, also have undertaken some of the retouchings and modifications of the *"Black" Paintings* documented in the prints and photographs that predate the building's restorations of the 1870s. But did he also execute the *"Black" Paintings* themselves sometime after December 1830, when Mariano's dowry was prepared, and before the mid-1830s, when knowledgeable others referred to the paintings as being by Goya himself? And if so, why? I submit that an understanding of the intent and meaning of the Quinta wall paintings, something Junquera does not address, establishes that they could not have been produced during that time, or by Javier; that is, it would have been totally without purpose or sense for the paintings to have been created during the absolutist rule that dominated in Spain from October 1823, when constitutional government ceased, until the death of Ferdinand VII in 1833.

During the mid-1830s, several people knew the Quinta wall paintings as created by Goya, if none admitted knowledge of their meaning. As early as 1834, as Junquera notices, a French periodical mentioned Goya as having painted all the walls inside his Quinta house. In 1835 (and after) Valentín Carderera – thoroughly conversant with Goya's art – referred to the *caprichos* and caricatures that Goya had painted on the walls of two rooms of his country house, as well as on the walls of its staircase. In the 1850s, two appraisals made when the Quinta was to be offered for sale recognized the wall paintings as by Goya. Junquera proposes that, in valuing the paintings as by Goya, the appraisers acquiesced to the wishes of his heirs to enhance the value of the property. But would highly qualified appraisers – including the Madrid fine-arts professor, José Peláez, who referred to the paintings as by the "immortal" Goya – have done so? And would Eugenio Lucas, admirer and emulator of Goya, unjustifiably appraise as by Goya paintings by another?

THE 1819 PURCHASE AGREEMENT — TWO FLOORS OR ONE?

In addition to his rereading of the 1830 dowry and his questioning of the 1850 appraisals, Junquera, in denying the *"Black" Paintings* to Goya, introduces a revised conception of the country house based upon his reading of Goya's 1819 purchase contract of the Quinta. In his view, the contract indicates that the house (and houses), described in the contract as "...a Country House...with adjoining garden; two low dwellings with differently distributed rooms...".[15] was not of two levels connected by a staircase but of one level, the two rooms holding the *"Black" Paintings* perpendicular to one another. Thus he argues that the paintings, which were a part of the walls themselves and by all accounts decorated two rooms one above the other as well as the connecting staircase, could not have been painted by Goya. Instead, he contends, they could only have been painted in rooms one above the other after Javier himself enlarged the house following Goya's departure. But this overlooks the fact that the transfer document executed when Goya transferred the Quinta to Mariano in 1823 specified that, as was well known at the time, Goya had *already* carried out significant and costly improvements to the Quinta, including enlargement of the "principal" house *(aumento de Casa principal)*. I propose that Goya himself may well have purposefully carried out adjustments to the house he owned from 1819, before – or even as – he "decorated" its walls with the frightening "black" scenes.

THE BRUGADA INVENTORY

In further justifying his thesis, Junquera justly doubts the previously accepted dating of a Quinta inventory done by the Spanish artist Antonio de Brugada

[14] Indeed, almost immediately following his father's death on April 16, 1828, Javier strained to assure in Bordeaux that he alone was Goya's heir, proving his claim with a will drawn up by his parents in 1812.

[15] Madrid, Archivo Histórico de Protocolos, P.° 22786: "...una Casa de Campo...con su Jardín unido; dos habitaciones bajas distribuidas con diferentes piezas...".

Figure 5. Goya, *The Witchy Brew*, now, oil on canvas, 0.53 x 0.85 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid.

(1804-1864), Goya's close friend in Bordeaux who was at his bedside when he died. Lacking a cover and end pages, the inventory is undated. It surfaced when Brugada's widow allowed a copy to be made by Desparmet Fitz-Gerald in 1875. She seems also to have informed Fitz-Gerald that within days after Goya died, Brugada traveled to Madrid with Javier and Mariano, and there served as an executor of Goya's testament.[16] The inventory was therefore assumed to date from 1828. As is now known, however, Brugada, a militant Liberal in Madrid obliged to live abroad from 1823 until 1834/5, was married in Madrid in January 1829, and was again in the city in 1830, from late February until September. His stay in 1830 coincided with the time – in May – when Javier apparently regained possession of the Quinta from his son, and before Mariano's dowry was prepared. The informally drafted Brugada inventory thus could date either from the time of Goya's death, or not too many years after, or perhaps later. Yet Junquera proposes a *much* later date, sometime between 1859 and 1878,[17] since he finds in it words that did not enter Spanish dictionaries (or lists of household possessions) until the last third of the nineteenth century. The word "vargueño" (or "barqueño"), for example, cited by him as absent from Spanish dictionaries of Brugada's time, is *still* absent from some Spanish and Spanish/English dictionaries; and dictionaries as well as legal documents often legitimize terms already commonly in use. But Brugada's inventory with its summary entries would hardly postdate his death in 1864.

Conveniently, Junquera's later dating of the Brugada inventory allows him to reject it as a record of how the *"Black" Paintings* were seen in 1828. For Brugada's two-column list of the Quinta wall paintings identifies the paintings as in two rooms one above the other, seven in the room on the lower floor and eight in the room on the "principal" floor. He included among those on the principal floor the painting he called "Two witches," (Fig. 5, *"The Witchy Brew"*); the smallest of the wall paintings, it was at some time moved and apparently replaced by a painting sold by 1867 which Mariano said was by his father, Javier.[18] With few discrepancies suggestive of changes in place-

"Conveniently, Junquera's later dating of the Brugada inventory allows him to reject it as a record of how the *"Black" Paintings* were seen in 1828."

[16] X. Desparmet Fitz-Gerald, *L'Œuvre peint de Goya, Catalogue Raisonné*, I, Paris, 1928-1950, pp. 40, 53-55.

[17] Junquera, "Los Goya...," p. 358.

[18] Muller, pp. 69-71, and fig. 32, the *Heads in a Landscape*, the only known painting possibly by Javier.

ments of some of the paintings, they were similarly described in 1867 and 1873.[19] But here we must ask why and how Brugada can be expected to have gathered together, so much later, his inventory of the Quinta house?

Unquestionably, the Quinta house was modified and "improved" after the wall paintings were begun. Alterations involved moving (and separating) at least some of the *"Black" Paintings*, the removal of those paintings once on the staircase wall, and the eventual construction of a grandiose staircase gracing the elaborated house. We know that over the years, *The Witchy Brew* (Fig. 5) was relocated, and that a trial transfer was attempted. We know, and x-rays prove, that two pairs of paintings on the short end wall of each of the rooms – the *"Saturn"* and the *Judith and Holofernes* in the room below, and *The Reading* and *The Ministration* in the room above – were each originally single images and not separate paintings. Precisely when these were divided, and other changes made, is unknown. But if Javier executed the wall paintings after December 1830, as Junquera contends, and sometime before then set the rooms

Figure 6. Goya, *Capricho 43, "El sueño de la razon produce monstruos"* 1797.1798. Etching and aquatint, 21.5 x 15.0 cm (New York, The Hispanic Society of America).

one above the other, he should have had little need to separate paintings or move others. Instead, Goya himself may have instituted such revisions before transferring the Quinta to Mariano in 1823, or when he returned to Madrid for two months in 1826, or during his three-month visit in 1827.

Junquera also questions the authority of Valentín Carderera, artist, writer, collector and intimate of Goya's heirs, as incorrectly referring in the 1830s to the wall paintings as frescoes – an almost generic term still used by many in discussing wall, or "mural" paintings. Although not painted in "true" fresco style but *al secco* and with oils, even a French visitor to the Quinta by 1875 who described the "remarkable" paintings as frescoes, added knowingly, "or better, paintings in oil on plaster."[20] After transfer to canvas in the 1870s, they certainly appeared to be oil paintings. Junquera also faults Carderera as "strangely" terming the horrific imagery of the paintings "beautiful and capricious," suggesting that such praise was perhaps designed to promote marketability of the Quinta house. But in the context of Carderera's admiration, and collecting, of Goya's art, his adjectives are quite fitting.

From my viewpoint, Junquera elicits even more egregious misconceptions from his rereadings. Having discovered in Mariano's dowry mention of a cloth hanging situated on the wall in the ground-floor *Sala* of the Quinta house and therefore concluding that the *"Black" Paintings* were painted on canvas, he cites me as stating "contrary to Glendinning" that "some paintings" were painted on a "textile," and the *Judith and Holofernes* on a "cloth stuck to the wall." Nowhere, however, could I refer to the *"Black" Paintings* as initially applied to any surface other than the prepared plaster of the Quinta house walls.

More troubling is Junquera's stress on the absence of any mention of the *"Black" Paintings* during Goya's lifetime. Invoked in support of his conclusion that they were painted by Javier after Goya had died, this standpoint ignores considerations of the intent and content of the artistic program at the Quinta which define the motivation, origin, and dating of the paintings. As

[19] See diagrammatic layouts of the paintings in Muller, 1984, pp. 62-63. See Yriarte, *Goya*, 1867, pp. 92-96, "La maison de Goya," and catalogue, pp. 140-141.

[20] P. L. Imbert, *L'Espagne, splendeurs et misères, voyage artistique et pittoresque*, Paris, 1875, p. 326. See Muller, 1984, pp. 53-54, concerning the medium employed for the Quinta wall paintings, all but certainly painted in oils *al secco*.

"To argue that because the paintings were not mentioned while Goya lived they cannot be by him is also to forget that neither could Goya's *"Disparates"* (or *"Proverbios"*) prints — of approximately the same years and essentially reflecting similar concerns — be completed or published during his lifetime."

I have noted briefly above and will demonstrate below, creation of the series was viable only during the liberal interregnum in Spain of 1820-1823. Thereafter, it could endure only as an apparently deliberately obscure, senseless indulgence. Purposeful ambiguities were perhaps even necessary on Goya's part, as was silence on the part of his friends and visitors to the Quinta. To argue that because the paintings were not mentioned while Goya lived they cannot be by him is also to forget that neither could Goya's *"Disparates"* (or *"Proverbios"*) prints – of approximately the same years and essentially reflecting similar concerns – be completed or published during his lifetime. They, too, remained without explications and could only seem enigmatic when the copper plates, which had been stored at the Quinta house, emerged during the mid-1850s, long after Goya died. An edition was at last printed by the Real Academia de Bellas Artes de San Fernando in Madrid in 1864, four decades after Goya felt constrained to forsake Spain.

Junquera's denial to Goya of authorship of the *"Black" Paintings* slights many interpretations of the paintings whether, for example, as an expression of a neoplatonic thematic or as Goya's unique renderings of images well fathomed and appreciated by his contemporaries.[21] (Ironically, English translations of some titles accompanying reproductions in Junquera's *The Black Paintings of Goya* – "A Final Pilgrim," "The Ministration," "The Fates and their Creation" and "The Witchy Brew" – as well as the room plans, are from my *Goya's "Black" Paintings*... [Muller, 1984] although the titles are incomprehensible since

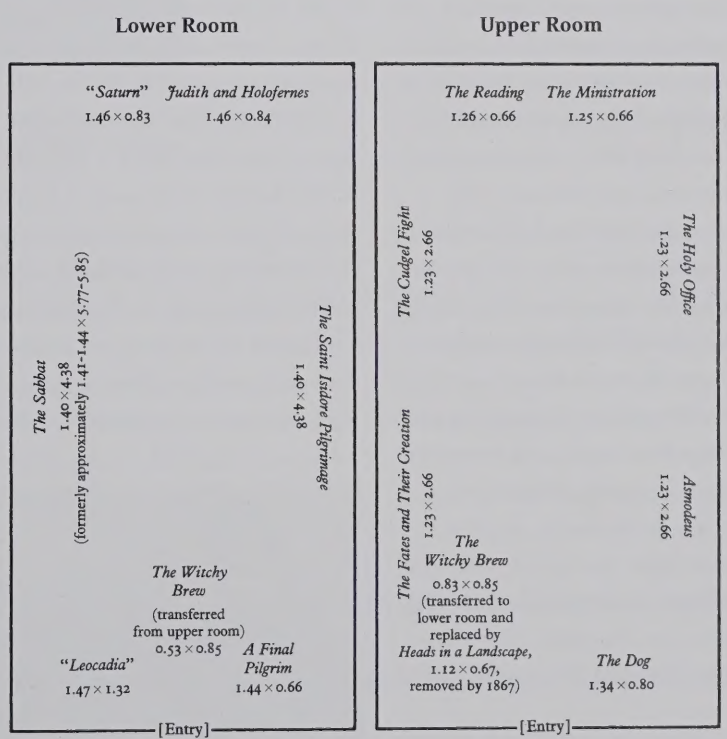
Lower Room
"Saturn" 1.46×0.83
Judith and Holofernes 1.46×0.84
The Sabbat 1.40×4.38 (formerly approximately 1.41-1.44×5.77-5.85)
The Saint Isidore Pilgrimage 1.40×4.38
The Witchy Brew (transferred from upper room) 0.53×0.85
"Leocadia" 1.47×1.32
A Final Pilgrim 1.44×0.66
[Entry]
Upper Room
The Reading 1.26×0.66
The Ministration 1.25×0.66
The Cudgel Fight 1.23×2.66
The Holy Office 1.23×2.66
The Fates and Their Creation 1.23×2.66
Asmodeus 1.23×2.66
The Witchy Brew 0.83×0.85 (transferred to lower room and replaced by Heads in a Landscape, 1.12×0.67, removed by 1867)
The Dog 1.34×0.80
[Entry]

Figure 7. (left) The Quinta wall paintings: the lower room plan, and **Figure 8.** (right) The Quinta wall paintings: the upper room plan. (Both as in Muller, 1984, p. 63, fig. 31).

[21] See José Manuel B. López Vázquez, *El programa neoplatonico de las pinturas de la Quinta del Sordo*, Santiago, 1981; and Muller, 1984, ch. III, "The Paintings: Themes and Theme."

they are without reference to my reasons for proposing them.)

GOYA'S ARTISTIC PROGRAM

At a moment when liberties enjoyed in Spain could still seem but temporary, representations that revealed an abhorrent past might intimidate even as they entertained, and even educated, audiences. And Goya indeed had persevered through so many chaotic changes of government in Spain. He had served, and portrayed, three of his nation's kings: the benevolent Charles III, his son, the ineffectual Charles IV, and finally, the loathsome Ferdinand VII. He had known the Enlightenment, witnessed the Napoleonic occupation of much of Spain, and closely observed – and put forth in his prints of *The Disasters of War* – the mutually murderous spoliations of the Peninsular War that followed. As the repressions of monarchy and Inquisition alternated dizzily with a short-lived Constitutional government, he more than once found himself forced to assuage the powers that dominated, and to accept, in turn, monarchy, Napoleonic rule, monarchy again, and the Constitution. He learned well that nothing could remain certain. If, with his art, he could illuminate monstrous evils of the past, he could at once also warn against their resurgence – at least until they again threatened to prevail, as happened during the summer of 1823.

Figure 10. Goya, *The Fates and Their Creation* , now, oil on canvas, 1.23 x 2.66 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid.

In the program offered in his two Quinta rooms, Goya forcefully and dramatically exposed for his intimates the heinous maladies that Spain – and humanity – suffered in the absence of Reason. It was a theme he had advanced earlier, in the *Caprichos* print series that he published in 1799. Its famed plate 43 (Fig. 6), which prefaces images censuring witchcraft and human frailties, shows the author beset by monsters while asleep. On the worktable on which he rests his head is lettered: "el sueño de la razon produce monstruos" [the sleep of Reason produces monsters] – Goya's proclamation that when humanity sleeps or dreams and cannot heed the cry of Reason, monstrous forces take command.

As viewed on the walls at the Quinta (and not so exhibited since), *Goya's "Black" Paintings* constituted a program with introduction and closing in each of the two rooms (Figs. 7 & 8). First met in the lower room was the *"Leocadia,"*[22] (Fig. 9) a portrayal of a pensive young woman seen contemplating the scenes pictured before her. In placement, pose, attitude, and role she parallels another introductory female encountered in antiquity by those

Figure 9. Goya, *Leocadia,* now, oil on canvas, 1.47 x 1.32 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid.

[22] Called "Leocadia" since it was said, since the mid-19th century, to have depicted Leocadia Zorilla Weiss, Goya's indirectly-related companion at the Quinta and in Bordeaux.

[23] Muller, "Goya and Pompeii?...," *Gazette des beaux-arts*, December, 1983, pp. 245-252.

Figure 11. Goya, *A Dog*, now, oil on canvas. 1.34 x 0.80 m. One of the *"Black" Paintings*. Rights reserved © Prado Museum, Madrid.

entering the Villa of the Mysteries at Pompeii to observe the Dionysian fresco cycle set forth in its room.[23] But the Quinta female gazes upon terrifying scenes – an odious *Sabbat* with its he-goat overseeing a midnight witches' assembly; bloody deaths enacted by a *"Saturn"* devouring his offspring (or a Satan consuming humanity) (Fig. 1) and a heroic Biblical *"Judith"* slaying Holofernes (Fig. 3); and a *Pilgrimage* led in darkness by the blind. Lastly, an aged, saddened *Final Pilgrim* could seem to bade farewell. He has witnessed the horrors in the room, but has survived although, somewhat like Saint Anthony, he abides the harangues of a Hellish creature bellowing in his ear.

Visual precedents for the cannibalistic *"Saturn"* and the courageous *"Judith"* were long known, and available in prints since the early 16th century. At the Quinta, however, Goya adapted the imagery to his own purposes, as only he could. Visually, only his own earlier works can be invoked – his red-chalk drawings of *Saturn* and *Judith*, and for the *Sabbat* and the *Pilgrimage*, a small painting of a witches' sabbat (*El aquelarre*), the *Disasters of war* plate 70 titled *"No saben el camino,"* or "They know not the way"[24] – if none so intensely attained the level of the Sublime (in the Burkean sense) reached in his Quinta rooms. Here, Goya charged his scenes with unmasking a dark past of superstition, myth and the misdirected religious zeal of the Inquisition – all of which were then still within the recent memory of those with whom he shared his world.

In the room above, one saw a pathetic, bound human shaped by, and subject to, wicked, warped *Fates* (Fig. 10). Thus destined to fight hopelessly and endlessly (*The Cudgel Fight*, Fig. 4), to search for learning or perhaps conspire (*The Reading*), to with-

"As viewed on the walls at the Quinta (and not so exhibited since), Goya's *"Black" Paintings* constituted a program with introduction and closing in each of the two rooms."

[24] Gassier/Wilson, cat. nos. 635, 636, 660, 1114.

stand ill-intentioned jabbing (*The Ministration*), to again follow an unholy *Holy Office* (of the Inquisition), and to suffer Fury and War (*Asmodeus*), humankind still might yet emerge, timidly, as does the concluding guileless *Dog* (Fig. 11) – shown in a near abstraction of earth and sky – to look to an unknown future, albeit, perhaps, with hope. And while "The Witchy Brew" (Fig. 5) was positioned at the right, its toothless crone and skeletal mate could seem to scrutinize the dog as it began to show itself. In concluding the room's cycle, the *Dog* facing a new dawn reminds us of Goya's earlier *Caprichos* prints 71 and 80 (*"Si amanece, nos vamos,"* or "If it's dawning, let's go," and *"Ya es hora,"* or "Now it's time"), the first showing a witches' coven which must vanish with dawn, the second hideous friarlike figures stretching and yawning, about to do the same as day breaks. Creatures of night or darkness cannot exist in light.

For, with all its Sublime terrors, Goya's dynamic and enlightening program held intimations of hope, which, like liberty, vanished in Spain in 1823.

While some together with Goya at the Quinta might delight in the exposure of such imagery, as had those who savored the small witchcraft scenes he painted by June 1798 for the country estate of the Duchess of Osuna,[25] or contemporary Madrilenians who relished spectacular sound-and-light phantasmagoria shows brought from Paris and adapted for a newly Constitutionally governed people by the Belgian-born Etienne Gaspard Robertson,[26] at least some of the thrill experienced arose from a realization that censure of Spain's political and religious past could again become seditious. Thus, all was urgent, and if the plaster walls of the Quinta house were carefully prepared to receive his paintings, the actual painting with broadly but surely applied rapid brushstrokes, even integrating underlying scenes, and some overpainting, testifies to an imperative that demanded speedy fulfillment.

CONCLUSION

Once again, then, we must ask why Javier Goya – to whom only one painting, apparently from the Quinta, may be attributable[27] – would have concerned himself during the oppressive monarchical regime of the early 1830s with illustrating the thematic described above, or would have been capable of producing it. To insist, as Junquera does essentially on the basis of a rereading of Mariano's 1830 dowry, that Javier did paint the works belies all other testimonies and visual evidences affirming the *Quinta* wall paintings as singularly Goya's own.

Finally and most significantly, we must remember that although the Quinta wall paintings can seem to have passed unmentioned while Goya lived, explanation for the deliberate nature of this omission resounds in a plea published in Madrid on April 13, 1820[28] – only slightly more than a year after Goya bought the Quinta:

> As the celebrated Francisco de Goya, prince of Spanish painters of this century, lives in Madrid, let the city commission him to paint or draw that which is representable [in the Inquisition] so as to indelibly impress it forever upon the memory... And hear a secret: I know from a good source that Goya is such a patriot that he will not refuse this commission: and that he will carry it out with his customary mastery and with the fairness he has always practiced. But this is not to be said to anyone.

And so Goya did, and so 'twas not said.

To deny authorship of the *"Black" Paintings* to Goya is to falsify, erroneously and egregiously, the artistic as well as the historical record.

[25] Gassier/Wilson, cat. nos. 659-664.

[26] Muller, 1984, pp. 217-234.

[27] See note 18 above; the "Heads in a Landscape" was painted directly on canvas and unlike the *"Black" Paintings* bears no evidence of removal from plaster.

[28] "Juan Turbio," in *El Conservador*, XVIII; as quoted in English on the title-page of Muller, 1984.

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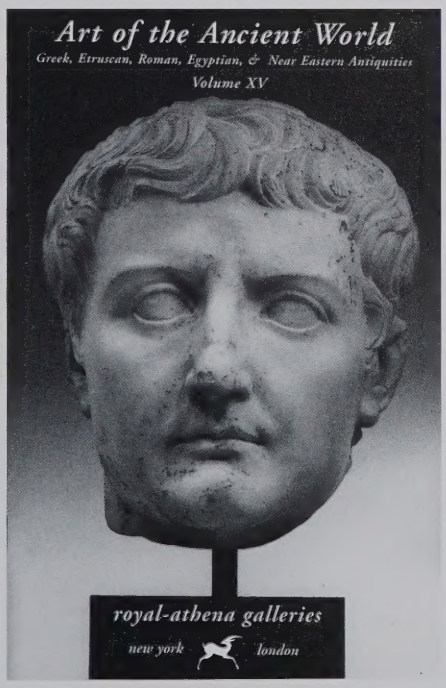

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CULTURAL HERITAGE IN POST-WAR IRAQ

ZAINAB BAHRANI*

The war in Iraq last spring and the current ongoing occupation under the Coalition Provisional Authority have raised some pertinent issues regarding the protection of cultural heritage in times of war. By now the disastrous looting of Iraq's museums and libraries in April is well known, and steps have been taken by the U.S. military and international law enforcement agencies to recover the looted objects. However, a terrible threat to the cultural heritage of Iraq still exists for cultural institutions, standing monuments and archaeological sites.

The immediate response to the April looting on the part of the international community of Mesopotamian scholars and heritage preservation professionals was promising. UNESCO called an emergency meeting of experts for April 16-18, and, within days, the Director of the British Museum did the same. But plans drawn up at these meetings have not yet been implemented due to military, diplomatic and security obstacles confronting the non-governmental organizations (NGOs) and cultural and academic institutions that wish to help. A U.S. military investigation, however, did proceed. A team headed by Colonel Matthew Bogdanos was initiated at the end of April. It treated the Iraq Museum as a crime scene, estimated losses from galleries and storage rooms, and proactively worked on the return of objects to the collection. Their work resulted in the return of over 1,700 objects to the Iraq Museum.

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DAMAGE TO THE IRAQ MUSEUM

During the summer of 2003, I volunteered my time and expertise to both the Iraq Museum staff and the U.S. military investigation in order to assist in the rescue effort (Fig.1). I was given free access to the storage rooms in order to assess losses, to help in determining exact locations from which objects were missing and the types of objects that had been taken from them. I also compiled information on specific missing pieces from the registers, from the museum's photograph archive, as well as from the archive of field notebooks. Doing this work first hand gave me a good sense of the conditions of the collection and the extent of work still needed in terms of inventories and conservation. While Colonel Bogdanos submitted his final report on the museum in September of 2003, it should be pointed out that the inventory process is only in its preliminary stage. The registers and card catalogue have, fortunately, survived, contrary to some early reports that they had been destroyed, but due to the chaos of the looting and destruction of the offices, these records are not in a condition to allow a quick or final assessment of the losses. While the original press reports of 170,000 missing objects is now known to be an exaggeration, the losses actually suffered by the museum are horrendous by any standards The number of objects still missing is now estimated at about 15,000, including about 4,975 cylinder seals.

For those unfamiliar with the Iraq Museum's significance as one of the world's most important antiquities museums, it is perhaps difficult to comprehend the magnitude of this disaster. Just imagine 15,000

Figure 1. Facade of the Iraq Museum, summer 2003. Photo: Zainab Bahrani.

Figure 2. Body of female stone statue from Temple of Hercules, Hatra. The head is U.S. Customs item 12. Photo: Zainab Bahrani.

objects missing from a famous Western collection such as the British Museum or the Louvre! It is important to make this point again because in the spring of 2003, the press pendulum swung in both directions. The initial sensationalizing reports stating that the entire collection was missing were quickly replaced by press accounts stating that only 33 objects were stolen. Clearly both accounts were far from the truth. Colonel Bogdanos believes that the numbers for both lost and recovered items will continue to rise, and both the Iraq Museum staff and the US military agree on an estimated 15,000 missing objects from this museum alone. That number includes well-known pieces as well as yet unpublished objects from very recent excavations.

The conditions of the storerooms at the Iraq Museum as I found them at the end of June were still disastrous. Both the new and old storage rooms had been ransacked and looted. Things that had not been taken were strewn over the floors and shelves, and many objects were damaged in the process. I estimate that an inventory of the storage rooms, adhering to normal museum standards, would require five to ten years to complete.

According to both the US military team and Iraq Museum staff, the pattern of looting in the museum

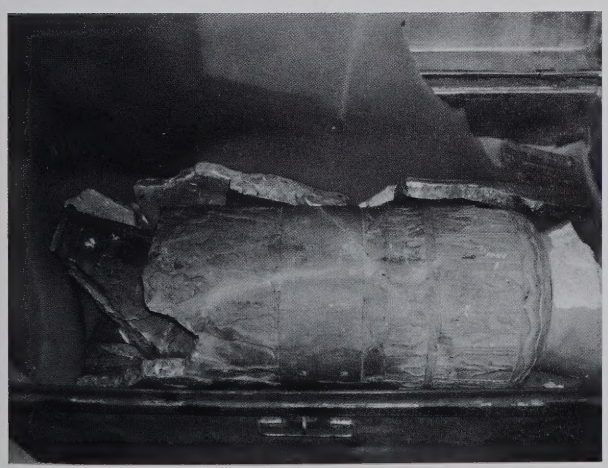

Figure 3. The Uruk (Warka) Vase as it was returned in June 2003. Photo: Zainab Bahrani.

Figure 4. Conservators and damaged statue of water deity from Khorsabad, 8th century BC. Photo: Zainab Bahrani.

"No survey of the post-war condition of Iraq's standing monuments has been made, and this is urgently needed . . ."

does not appear to have been random. There is indication that the looting was at least in part conducted by thieves who were well aware of the type of objects that would sell best on the international illicit antiquities market. A case in point: the heads of several classical statues were stolen, while other less marketable objects that stood next to them were left unharmed (Fig. 2). In the storage rooms, the seal collection was targeted while other objects nearby were left behind.

Four major objects from the main galleries have been recovered as a result of the efforts of the military investigation and the work of military police. These include the Uruk (Warka) vase (Fig. 3) and the alabaster female head also from Uruk, both dating to about 3200 BC. The latter was found in September, after the final report by Bogdanos had been submitted to the Pentagon. In addition, the Bassetki Statue, the base and lower half of a large alloyed copper statue of a seated nude male figure bearing an inscription of the Akkadian king Naramsin (2220-2184 BC), and a bronze brazier of Shalmaneser III (858-824 BC) were recovered by military police in November. Thousands of other, less known, objects have also been recovered in international seizures and through a local amnesty program that encourages returns with a "no questions asked" policy within Iraq.

BASIC NEEDS

While progress in the recovery of lost museum objects has been encouraging, much work remains to be done in all areas of cultural heritage (Fig. 4). The Museum and the State Board of Antiquities and Heritage are still in desperate need of curatorial and conservation supplies. They need the time, the assistance, and the expertise of colleagues outside of Iraq. They are also in need of basic necessities such as telephones, email and internet access, and so on, as well as academic publications, to which they have had no access since 1990, before they can return to standard working conditions.

DAMAGE TO OTHER INSTITUTIONS

While the looting of the Iraq Museum has received a great deal of press, the other looted cultural institutions of Iraq have rarely been mentioned. These include the Museum of Modern Art in Baghdad, the Mosul Museum and a number of important libraries and manuscript collections. Among them are the National Library (Dar al Kutub wa al-Watha'iq), The House of Wisdom (Bayt al Hikma), and the Religious Endowment Library (Maktabat al Awqaf al Markaziyya). Assessments of damage and loss to the libraries are underway now and have not yet been completed, but medieval manuscripts are likely to appear on the market, alongside antiquities, due to this looting.

MONUMENTS

No survey of the post-war condition of Iraq's standing monuments has been made, and this is urgently needed since monuments can suffer damage even if they are not hit directly. That was the case with the great Arch of Ctesiphon in the previous Gulf War (1991). The Arch, the largest single-span brick vault in antiquity, dating to the Sassanian era, suffered cracks that still need to be stabilized. An inventory of not only ancient Mesopotamian sites and monuments, but of those of all eras needs to be made in order to establish plans for the long-term preservation of Iraq's cultural heritage sites.

ARCHAEOLOGICAL SITES

The most pressing problem at the moment, however, is the horrendous looting of archaeological sites, which continues across the country. Iraq has over ten thousand archaeological sites, the majority of

"The international art community can assist in the current rescue effort by adhering to the principles of this resolution . . ."

which have not been excavated or studied. The massive scale of the current looting is a concern not only because it means that the cultural artifacts stolen from the sites are then taken out of the country illegally for sale, but the plunder of these sites also results in irreversible damage both to architectural structures and to artifacts. But the damage does not end there. The plunder also means the loss of historical and scientific data regarding not only artifacts and their contexts, but archival knowledge about the collection and uses of historical texts through the millennia, the social and cultural contexts of material culture, settlement patterns, urban planning, the effects of social or natural events on the lives of the ancients and so on. In sum, what is lost through the plunder of ancient sites is world history itself. Unfortunately, in the past nine months alone, several sites, such as Isin, a site south of Babylon, and Larsa, near Ur, in the south of Iraq, have been irreversibly destroyed in this way. The Coalition Provisional Authority plans to train about 1,500 local guards to be placed at sites throughout Iraq early in 2004. These guards have not yet been deployed, however.

The plundering of sites, which has reached an extent previously unimagined in Iraq, is spurred on by the fact that the looters are able to sell their plunder very easily Their primary market is not in Iraq: it is in the US, Western Europe, Israel, and Japan. After the 2003 war, a UN Resolution banning the trade in Iraqi antiquities was passed, but objects continue to appear outside Iraq. The international art community can assist in the current rescue effort by adhering to the principles of this resolution and by reporting questionable objects to the appropriate authorities.

OTHER RISKS TO IRAQ'S HERITAGE

The loss of cultural heritage through the looting of the museums and libraries and the destruction of the archaeological sites may be clear-cut, but there are other, perhaps less obvious, ways in which the cultural property of Iraq is at risk. For example, recent reports from colleagues in Baghdad have it that the Coalition Provisional Authority and the National Geographic Society are planning to organize a travelling exhibition of the famous Assyrian Nimrud gold, which would go to venues in the United States. While such an exhibition may have the beneficial result of raising awareness among the American general public of the magnificence of Mesopotamian arts and culture, it nevertheless raises important procedural questions about decision-making in the area of cultural property. If decisions about exhibitions are made without the advice of professional curators and archaeologists who specialize in Mesopotamia, the results could have long-term negative effect on the ancient objects. Travelling exhibitions must be organized according to international museum standards of conservation, handling and packing of objects. Likewise, at some point, decisions regarding new permits for archaeological excavations will have to be made. These decisions, too, could be disastrous if they are made in an uninformed manner.

The large-scale construction projects and development planned for Iraq by U.S. corporations also poses a serious threat to the cultural heritage of Iraq. Before construction contracts are granted to corporations, it is of the utmost importance that all sites be surveyed by archaeologists professionally trained in Mesopotamian archaeology and that the Department of Antiquities and Heritage be involved at the preliminary stages of such investigations. Such measures for ensuring the safety of ancient sites before construction would not be new; they were written into the previous antiquities laws of Iraq. Similar cultural heritage laws are standard in all antiquities rich countries, and they ought to be observed by the current coalition rule in Iraq as well as by any future Iraqi government.

EXPERT OPINIONS AND LIABILITIES – AN IFAR UPDATE

JUDITH BRESLER*

EDITOR'S NOTE: *As part of its continued interest in issues of authenticity and expert liability for opinions, IFAR invited art attorney Judith Bresler to update her two previous IFAR articles on the subject (see* IFAR Journal, *Vol. 2, no. 3, 2000 and* IFARreports, *October 1987). The following article focuses on recent case law.*

"Developing case law has made it abundantly clear that experts are most vulnerable to liability in suits of negligence."

As the United States art market continues to proliferate with fakes, forgeries, works of dubious provenance, including some highly-publicized plunder from World War II, and some works that have been repatriated in the glare of the media and the law, expert opinions have become ever more crucial in serving to rid the market of unwanted material. Accordingly, the appraisal of art by art appraisers and the authentication of art by art historians, *droit moral* holders[1] for a given artist, and other art specialists (collectively, "art experts") have become big business.

This article is an updated overview of some of the more common tort liabilities that can be incurred by an expert in the rendering of opinions about art – and how the expert can limit his or her legal exposure. Developing case law has made it abundantly clear that experts are most vulnerable to liability in suits of negligence. In view of this potential exposure, however, the law has even-handedly developed an arsenal of generally effective preventative measures for use by the expert – most notably, a contract (to be discussed later in this article) – to provide protection against negligence actions. Possibly because experts can potentially insulate themselves against liability in negligence, recent cases against experts have also included some by plaintiffs misguided enough to sue for fraud or for negligent misrepresentation. As will be seen here, the legal requisites both for fraud and negligent misrepresentation generally defeat the hapless plaintiff (thereby not posing as immediate or far-reaching a threat to the expert). Each is addressed in turn.

FRAUD

Cohen v. Mazoh[2]

Here in 1990, the plaintiff Joseph Cohen, a collector of fine art, contacted the defendant, art dealer Steven Mazoh, to discuss Cohen's interest in buying a Baroque painting entitled *Joseph*

* Judith Bresler, Esq. is the co-author of *Art Law: The Guide for Collectors, Investors, Dealers, and Artists* (New York: Practicing Law Institute, 1989 [First Edition]; 1998 [Second Edition]), and is currently working on the Third Edition. She is also Counsel to the law firm Cowan, DeBaets, Abrahams & Sheppard.

[1] Where an artist is deceased, the holder of the decedent-artist's *droit moral* (in nations recognizing the *droit moral* and a post mortem application of such rights) is generally regarded as an authenticator of the artist's work.

[2] *Cohen v. Mazoh*, New York State Supreme Court, NY County, Index # 604029/02, May 21, 2003.

". . . Recent cases against experts have also included plaintiffs misguided enough to sue for fraud or for negligent misrepresentation. As will be seen here, however, the legal requisites both for fraud and negligent misrepresentation generally defeat the hapless plaintiff . . ."

and Potiphar's Wife, purportedly by Orazio Gentileschi. Mazoh represented that the painting was authentic and, based on Mazoh's representation, Cohen bought the painting by exchanging it for four other works in his collection that, allegedly, were collectively worth $1.2 million. A few years later, in 1995, Cohen insured his painting which was appraised at $1 million. In the fall of 2000, Cohen then engaged the services of Diane Kunkel, an art research consultant, to catalog Cohen's art collection. Shortly after she was retained, Kunkel, on behalf of Cohen, contacted Keith Christiansen, a curator of the Metropolitan Museum of Art in New York, offering to lend the Met Cohen's painting for an upcoming Gentileschi exhibit to be held at the Museum. Much to Kunkel's surprise, Christiansen declined the offer: he indicated that the painting was irrelevant to the Met's Gentileschi exhibit and that in any event, it was the wrong size for the exhibition. When Kunkel asked Christiansen if he had any doubts about the authenticity of Cohen's Gentileschi, Christiansen advised Kunkel to consult the Ward Bissell Catalogue Raisonné on Gentileschi. Kunkel did so, and page 191 of the catalogue indicated that the "Gentileschi painting was genuine and within 'the ranks of Gentileschi's autograph works.'"[3] Subsequently, Christiansen declined Kunkel's invitation to examine Cohen's painting, advising her that he had already seen it on several occasions including at Mazoh's gallery before he sold it to Cohen.

In September 2001, Christie's appraised Cohen's painting for estate tax purposes in the amount of $1 million. In January 2002, Mazoh provided Kunkel with a fact sheet about the Gentileschi painting. The fact sheet revealed, among other information, that the painting had once been owned by a Hans Wetzlar of Amsterdam. Wetzlar, as it happens, though not indicated on the fact sheet, was a Nazi collaborator during World War II. In the next month, Kunkel contacted Christiansen to obtain another appraisal of the painting. Christiansen, during a telephone discussion with Kunkel, indicated to her for the first time that he did not believe the painting was an authentic Gentileschi, but he agreed to examine it. In March, Christiansen examined the painting and advised Kunkel that it was not an authentic Gentileschi. He also informed Kunkel that he had relayed that same opinion to Mazoh prior to Mazoh's sale of the painting to Cohen.

Upon learning of the exchange between Christiansen and Kunkel, Cohen sued Mazoh for fraud. In his suit, Cohen alleged that (1)Mazoh represented that the Gentileschi was authentic and (2)Mazoh failed to inform Cohen that the painting had been owned by a Nazi collaborator, in order to induce Cohen to buy the painting.

In moving to dismiss the claim regarding authenticity, Mazoh argued that he did not falsely represent that the Gentileschi painting was authentic because the definitive scholarly view – both at the time of its sale to Cohen and at the time of the lawsuit – is that the painting, in fact, is authentic. To support his argument, Mazoh cited the Ward Bissell Catalogue Raisonné, and Bissell's reference to the German art historian Hermann Voss who, in 1954, also determined that *Joseph and Potiphar's Wife* was an authentic work by Gentileschi. Moreover, as Mazoh noted, during each of the two times Cohen had the painting appraised – 1995 and 2001 – the painting was valued at $1 million,

[3] *Id.*

and neither appraisal questioned the authenticity of the painting. The New York State Supreme Court agreed, finding that Cohen's vague allegations about Christiansen's doubts as to the painting's authenticity were insufficient to sustain a cause of action in fraud.

In moving to dismiss Cohen's claim regarding provenance, Mazoh argued that Cohen's allegation that Mazoh knew that Wetzlar was a Nazi collaborator during World War II was irrelevant and nevertheless belied by the fact sheet summarizing the Gentileschi's provenance: a document simply stating, without supplying dates or any other details about Wetzlar's ownership, that the painting was part of the collection of Dr. Hans Wetzlar of Amsterdam. That is, Mazoh asserted that Cohen did not explain how, in 1990, Mazoh either could or should have known that Wetzlar was a Nazi collaborator during World War II. Once again, the court agreed. It noted that Cohen's bare allegation was insufficient to sustain a claim for fraudulent omission because the allegation was unsupported by a single fact detailing the basis for Mazoh's alleged "knowledge" in 1990 of Wetzlar's collaboration. The court therefore dismissed the case for lack of "scienter."

"Scienter" is a crucial element in a successful case of fraud. It means previous knowledge of a state of facts...guilty knowledge. Such knowledge is often difficult to establish.

"Scienter" is a crucial element in a successful case of fraud. It means previous knowledge of a state of facts . . . guilty knowledge."

Zoellner v. Christie's[4]

Christie's auction house, the defendant, held a stamp auction in March 1987 of "The Louis Grunin Collection of U.S. Stamps, 1851-1857." The plaintiff, Robert Zoellner, a stamp collector, was the successful bidder for lot 51 of the collection, entitled "The Consul Klep Cover," which he purchased for $121,000, including the buyer's premium.

Christie's sales catalogue provided, in pertinent part, that:

> [a]ll lots are sold as authentic and correctly described (unless the catalogue descriptions or sale room notices or announcements provide otherwise, in which case lots are sold "as is").[5]

Zoellner claimed that The Consul Klep Cover was neither sold "as is," nor were there any indications in catalogue descriptions, sale room notices or announcements that the lot was not authentic. Accordingly, he reasonably relied on Christie's representation that The Consul Klep Cover was authentic.

Time passed and eleven years later – October 1998 – Zoellner offered his stamp collection for sale at auction through another gallery. He was, however, forced to withdraw it, pending further investigation, when the gallery questioned the authenticity of The Consul Klep Cover. In January 1999, the Philatelic Foundation issued a final opinion that The Consul Klep Cover was counterfeit. Zoellner subsequently asked Christie's to rescind the 1987 sale and to return his purchase price.

When Christie's refused (its limited warranty runs for five years following the date of sale), Zoellner then sued Christie's for fraud, claiming Christie's either knew or should have known that the authenticity of The Consul Klep Cover was questionable. Christie's moved to dismiss the case on the ground that Zoellner's claims were time-barred in that he failed to show that he could not have discovered the alleged fraud earlier by using reasonable diligence. However, as the New York State Supreme Court noted here in 1993, even assuming that Zoellner's claims were timely brought, on the ground that he had no reason to suspect the authenticity of the stamp collection until he tried to sell it in 1998, Zoellner failed to submit any evidence demonstrating that Christie's had any knowledge or any reason to believe that The Consul Klep Cover was anything but genuine. That is, once again, the plaintiff was unable to demonstrate scienter, or guilty knowledge of an earlier state of facts.

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[4] *Zoellner v. Christie's*, New York State Supreme Court, NY County, Index #120637/99, October 3, 2003.

[5] *Id.*

Figure 1. This *Pieta*, oil on canvas, 37½ x 68 inches, figured in a lawsuit by a previous owner after it was reattributed by Christie's to Ludovico Carracci and sold at auction in 2000 for more than $5,000,000.

NEGLIGENT MISREPRESENTATION

Similarly to fraud, suits in negligent misrepresentation pose significant obstacles to a prospective plaintiff, which, of course, is reassuring to the expert. The obstacles are graphically illustrated in the recent case immediately following.

Ravenna v. Christie's[6]

The plaintiff Guido Ravenna, a citizen of Argentina residing in Buenos Aires, was visited there in July 1999 by a French art dealer named Stromboni.[7] Ravenna had inherited some paintings from his parents and, having no knowledge of their authorship or value, decided to sell them. Stromboni offered to pay Ravenna $50,000 for a painting entitled *Pieta* (as well as additional amounts for certain other paintings) and insisted on a prompt acceptance or rejection of his offer. After Stromboni's appearance, Ravenna telephoned his wife Ana who was visiting her daughter in New York and had with her color photographs of *Pieta* (Fig. 1) and some of the other paintings. Ravenna directed Ana to consult with Christie's auction house in order to determine whether he should accept Stromboni's offer or consign the paintings for sale at auction.

Accordingly, a few days after Stromboni's visit to Ravenna, Ana went to Christie's and there met with James Bruce-Gardyne, a Vice President of Christie's and a specialist in Old Master paintings. Ana Ravenna told Bruce-Gardyne about Stromboni's offer and solicited his opinion as to the authorship and value of *Pieta*. Upon viewing only the color photograph of *Pieta*, Bruce-Gardyne determined that it was a work from the studio of Nuvolone, a "relative minor"[8] 17th century Italian artist, and estimated its value at $10,000-$15,000. Upon learning this, Ravenna accepted Stromboni's offer for *Pieta* and sold it to him for $50,000. A few months later *Pieta* was consigned to Christie's for sale. Christie's physically examined the painting, and researched the labels (indicating the painting's provenance) found on the reverse of the painting, catalogued it, and placed it in its January 2000 auction of Important Old Master Paintings. Christie's auction catalogue for that sale described *Pieta* in pertinent part as:

> a highly important rediscovery of a work by one of the great masters of the Italian Baroque, Ludovico Carracci[9]

and continued with a lengthy and richly detailed description of the artistic flourishes and nuances of *Pieta* that, in fact, made it a Carracci. Not surprisingly, *Pieta* sold at auction: its purchase price was $5,227,500 – more than 100 times the price Ravenna had received from Stromboni!

When Ravenna learned about the sale, he sued both Christie's and its expert, James Bruce-Gardyne,

[6] *Ravenna v. Christie's Inc.*, New York State Supreme Court, NY County, Index # 121367-00, March 22, 2001, *affirmed*, NY Supreme Court, Appellate Division, 1st Dept., December 4, 2001.

[7] Complaint, *Ravenna v. Christie's*, USDC. SDNY, #00Civ.6316, August 23, 2000. The background information provided in the next few sentences in the text, up to the point where Ana Ravenna arrives at Christie's, is likewise from the Complaint.

[8] *Id.*

[9] *Id.*

on a theory of negligent misrepresentation, alleging that the:

> attribution/evaluation of *Pieta* supplied to [Ravenna] by [the] defendants was false ...and misleading and was rendered in the regular course of their business and...was supplied for the guidance of [Ravenna] in deciding on what terms *Pieta* should be sold [and Ravenna] reasonably relied on the attribution/evaluation [and] [d]efendants failed to exercise reasonable care...in obtaining and communicating to [Ravenna] the attribution/evaluation of *Pieta*.

"Noted experts — unless they carefully circumscribe their responsibilities — are implicitly held to a high standard of care . . ."

Christie's and Bruce-Gardyne moved to dismiss the suit for failure to state a cause of action and the New York State Supreme Court in March 2001, affirmed by the Appellate Division in December 2001, agreed. In dismissing the case, the New York courts noted that there was no evidence suggesting the existence of a special relationship of trust and confidence between the parties giving rise to a duty of care flowing from the defendants to the plaintiff. As the Appellate Division noted, there was no evidence that the Ravennas either retained or paid Christie's for its advice, there was no allegation of their having prior or subsequent dealings with Christie's, and Ana Ravenna did not even make an appointment to visit Christie's: the attribution/evaluation was basically free advice based on a walk-in inquiry.[11]

As the Appellate Division concluded, while Bruce-Gardyne was aware that the plaintiff would be relying on his opinion, "reliance and the existence of a special relationship between the parties are two distinct elements of a negligent misrepresentation claim."[12]

NEGLIGENCE

Experts take note: the obstacles a plaintiff must overcome to prevail in fraud and negligent misrepresentation suits should be contrasted with the relative ease of establishing simple negligence. Noted experts – unless they carefully circumscribe their responsibilities – are implicitly held to a high standard of care, as evidenced in the recent New York case discussed below.

E.S.T., Inc. v. Christie's

Here, the plaintiff E.S.T. was a professional corporate buyer and seller of fine art. In March of 1998, its agent, Mimi Davis-Bloch, on behalf of E.S.T., consigned four of its paintings to Christie's auction house for sale at auction, one of these paintings being a 16th century Old Master oil painting entitled *The Entombment of Christ*

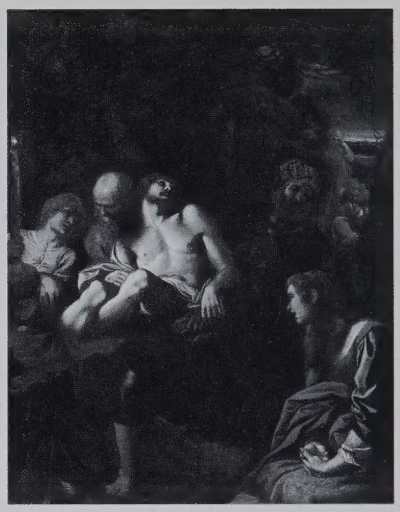

Figure 2. This *Entombment of Christ*, oil on copper, 17 ¼ x 13 ¾ inches, figured in a lawsuit after it was sold at auction misattributed to a pupil of Annibale Carracci, rather than to the master himself.

(Fig. 2). The painting was examined at Christie's for catalogue purposes by Anthony Crichton-Stuart, an in-house specialist at the time and known to be one of the leading experts in the United States in Old Master paintings. While examining the work, Crichton-Stuart was purportedly asked by Davis-Bloch to identify the artist who created the painting. He identified the artist as Sistro Badalocchio, one of the most able pupils of Annibale Carracci, an important painter of the late 16th and early 17th century, and a cousin of Ludovico Carracci. Crichton-Stuart estimated the painting's value at $10,000- $15,000. *The Entombment of Christ* was described as such in Christie's auction catalogue and duly sold in its May 1998 auction of Old Master Paintings for $12,000.

[10] *Id.*

[11] NY Supreme Court Appellate Division, *supra* note 6.

[12] *Id.*

E.S.T., on the other hand, argued that "authenticity" does not include the attribution of a painting, and that had Christie's intended to include exculpatory language regarding attribution in its consignment agreement, it could easily have done so.

Subsequent to the auction, it appeared that Crichton-Stuart had misattributed *The Entombment of Christ* which, in fact, was painted by Carracci himself and worth approximately $300,000. E.S.T. sued Christie's both for negligence and breach of fiduciary duty on the grounds that Christie's failed to recognize the painting's true author and dramatically higher value. Christie's responded that its sole responsibility under the consignment agreement was to offer the painting for sale at auction. It asserted that the terms of the consignment agreement clearly demonstrate that Christie's was not required either to provide E.S.T. with an appraisal of the painting or to identify its artist. Specifically, Christie's referred to Section 6(b) of its consignment agreement with E.S.T. which provides, in relevant part:

> 6. SALES ARRANGEMENTS
> (b) Any written or oral appraisal, estimate or other statement of Christie's... with respect to the estimated...selling price of any lot of Property is a statement of opinion only and shall not be relied upon by Consignor... as a prediction or guarantee of the actual selling price. Christie's makes no representations or warranties to Consignor with respect to the Property, its *authenticity* [italics mine], condition or otherwise. Christie's shall not be liable for errors or omis sions in catalogue or other descriptions of the Property...[14]

Relying on Paragraph 6(b) of its consignment agreement with E.S.T., Christie's moved to dismiss the complaint. The crux of the issue was this: whether omission of the word "attribution" from Christie's limitations of its liability leaves Christie's open to liability for *misattribution* of the painting by its employees. Christie's asserted that omission of the word "attribution" from the consignment agreement did not render the exculpatory language in Paragraph 6(b) ambiguous because inclusion of the word "authenticity" makes the word "attribution" unnecessary: that is, "authenticity" assumes authorship.

E.S.T., on the other hand, argued that "authenticity" does not include the attribution of a painting, and that had Christie's intended to include exculpatory language regarding attribution in its consignment agreement, it could easily have done so. Therefore, as E.S.T. continued in its argument, because the clause is sufficiently vague and ambiguous, the clause could be interpreted as *not* limiting Christie's liability for misattribution. Accordingly, as E.S.T. concluded, due to the ambiguity of the agreement, it should be construed against the drafter, that is, Christie's.

Christie's asserted that . . . inclusion of the word "authenticity" makes the word "attribution" unnecessary: that is, "authenticity" assumes authorship.

Christie's had moved to dismiss the case for failure to state a cause of action. The New York State Supreme Court, however, did not dismiss the case because the court could not determine, as a matter of law, that misattribution of a painting is included in the exculpatory language addressing authenticity. (The case was ultimately settled on confidential terms.)

Negligence encompasses a variety of misdeeds. An expert may incur

[13] *E.S.T., Inc. v. Christie's Inc.*, New York State Supreme Court, NY County, June 28, 2001.

[14] *Id.*

"Negligence...poses more of a free-wheeling litigious threat to the expert."

such liability, under certain circumstances, for rendering an erroneous opinion about the value or authorship of a work of art (as in, for example, *Estate of Querbach*[15]), for questionable draftsmanship of an appraisal, an appraisal contract, a consignment agreement or other document (as seen in the case just discussed), or for losing or damaging property taken into custody for purposes of study or evaluation, as illustrated in the next recent case to be discussed.

Pilliard v. Sotheby's[16]

The plaintiff, Martha Pilliard, living in Honolulu, Hawaii, agreed, in a discussion held with Sotheby's auction house in March 1989, to consign for sale at auction her wooden jar purportedly sculpted by the artist Paul Gauguin. The jar was listed in a 1963 catalogue by an expert, Christopher Gray, entitled *Sculptures and ceramics of Paul Gauguin*. That same month, Pilliard duly shipped the jar to Sotheby's in New York and Sotheby's issued Pilliard a consignment receipt for it. The receipt included, among other information, Sotheby's preliminary estimates of the jar's sale value: $80,000-$100,000. Sotheby's also forwarded Pilliard for her signature a consignment agreement which provided the following, among other points:

- Sotheby's would bear the risk of any loss or damage to the jar;
- Sotheby's liability would not exceed the mean of its latest pre-sale estimates;
- Sotheby's could revise its pre-sale estimates at its sole discretion; and
- Sotheby's could withdraw the jar from sale if doubt arose as to its authenticity.[17]

Pilliard agreed to these points and signed Sotheby's consignment agreement. She did, however, add a provision: if the jar was not sold at auction, Pilliard wanted its immediate return. She did not permit Sotheby's its standard 60-day period to attempt a sale by private treaty in the event the jar failed to sell at auction. The following month – April 1989 – Sotheby's decided not to sell the jar. Their experts had apparently decided that the jar was not authentic and this opinion was confirmed by experts at New York's Metropolitan Museum of Art. Accordingly, Sotheby's notified Pilliard by telephone, and she requested that the auction house return the jar to her by air freight.

A few years passed and Martha Pilliard had yet to receive her jar from Sotheby's. In November 1993, Pilliard wrote to Sotheby's demanding the jar's return. In January 1994, Sotheby's wrote back to Pilliard, noting that "after an enormous amount of time and effort,"[18] it was unable to locate the jar and because it could not find the jar, Sotheby's would process the insurance claim in light of the "aggravation this situation has caused"[19] Pilliard in the amount of $1,000.

In January 1995, Pilliard sued Sotheby's in a New York federal district court for (1) $200,000, seeking the return of her jar, (2) an additional $90,000 on her breach of contract claim ($90,000 being the mean of the pre-sale estimates), and (3) additional damages on her negligence claim, the damages calculated on the highest value of the jar from the time she consigned it to Sotheby's to the time she learned that Sotheby's could not locate it. Sotheby's moved to dismiss the case, claiming that all of Pilliard's claims were barred by the statute of limi-

[15] *Estate of Querbach v. A & B Appraisal Service*, No. L-089362-85 (N.J. Super. Ct., Bergen County 1987). The case was discussed in my earlier article, "Expert Opinions and Liabilities," *IFAR Journal*, Vol. 2, no. 3, Summer 1999, and is reproduced in 1 F. Feldman, S. Weil & S. Biederman, *Art Law* 282 (1988 Supp.).

[16] *Pilliard v. Sotheby's, Inc.*, 1998 WL 126060, USDC SDNY.

[17] *Id.* at 1.

[18] *Id.* at 2.

[19] *Id.*

"Negligence encompasses a variety of misdeeds. An expert may incur such liability, under certain circumstances, for rendering an erroneous opinion about the value or authorship of a work of art . . ."

tations. The court therefore considered each claim in turn.

As to the breach of contract claim, the court noted that the consignment agreement (which was the contract in issue) was an agency agreement for services, with Sotheby's acting as Pilliard's agent to sell the jar at auction. As it was an agency agreement, Pilliard was entitled to the benefit of a six-year statute of limitations. Therefore, her claim for breach of contract was timely.

As to Pilliard's claim seeking the return of the jar, the court, in applying New York law, observed that a plaintiff must bring suit within three years after the cause of action accrues. However, as the court noted, under New York law, where a party lawfully acquires possession of property as was the case here (the jar was willingly consigned to Sotheby's), then the original owner must demand the property's return and the possessor must refuse to return it before the three-year time period starts to run. Here, Pilliard demanded the return of her jar both in her April 1989 telephone discussion with Sotheby's and in her November 1993 letter. Sotheby's January 1994 letter to Pilliard constituted Sotheby's refusal. Only then did the three-year time period start to run. Since Pilliard brought suit in 1995, her action was certainly timely.

As to Pilliard's negligence claim, the court noted, that under New York law, negligence, too, has a three-year statute of limitations period in which to sue for negligence resulting in injury to property. However, the three-year period does not begin to run until an injury is sustained. That is, Pilliard's negligence claim did not become complete until Sotheby's breached its duty by refusing to return the jar upon demand. Since, again, Sotheby's refusal was its January 1994 letter to Pilliard, her negligence claim was also timely. In summary, if an expert takes property into custody for evaluation or for other purposes, the expert should exercise care: the property owner may have a considerable period of time in which to bring suit on a variety of theories.

LIMITING EXPOSURE TO NEGLIGENCE

Who can sue for negligence? Generally, anyone with an interest to protect who either commissions an expert's opinion or is known by the expert to be relying on the expert's opinion. Therefore negligence, unlike negligent misrepresentation which, as noted earlier, requires not only reliance but a special relationship of trust between the parties, poses more of a free-wheeling litigious threat to the expert. The principal manner in which an expert can achieve some insulation against liability in negligence is by circumscribing his or her responsibility in a given situation through a brief (one-page) letter agreement. It is crucial to circumscribe responsibility, as the standard of care to which an expert will be held by the courts depends in part on (1) the express and implied understandings about the scope of the expert's opinion, and (2) the expert's qualifications and depth of experience.

Scope of Opinion

First, the expert's letter agreement should provide that the opinion to be furnished by the expert is solely for the commissioning party and not for dissemination to third parties. This provision will serve to limit the number of potential plaintiffs harassing the expert, since the expert will now have no reason to believe that any unrelated third parties will be relying on the expert's opinion.

Second, the expert should indicate in the letter agreement the methods of evaluation to be used and, equally important, the methods of evaluation that will not be used because they are beyond his or her expertise. For example, if the expert is an appraiser and is asked to appraise a sculpture by Auguste Rodin, the expert might indicate that the opinion will be based on stylistic analysis and comparable sales, but not scientific testing as it is outside his or her scope of expertise. That way, the expert will not be found liable for negligence in the event information obtainable solely through scientific testing turns out to be crucial in the formulation of a complete and correct evaluation of the Rodin.

Third, the letter agreement should require the commissioning party, upon the expert's request, to furnish the expert with any and all factual information the commissioning party has in connection with the property to be evaluated. That way, if the commissioning party furnishes the expert with false or erroneous information that materially contributes to the expert's erroneous opinion, and the expert is subsequently sued for negligence, the expert may well be able to assert successfully a defense of contributory negligence.

Finally, the letter agreement should provide some exculpatory language: for example, that the commissioning party indemnify the expert against all third party claims (which should not be a problem for the commissioning party since the letter agreement also provides that the opinion is not to be disseminated to third parties in the first place). Major auction houses and a number of other organizations go further: their contracts include exculpatory language insulating them from claims from the actual party commissioning the opinion.

"The letter agreement should provide some exculpatory language . . ."

The Pollock-Krasner Authentication Board, Inc. was one such organization. Established in 1990[20] to authenticate works of art purportedly by either Jackson Pollock or his wife Lee Krasner, it used a written agreement with exculpatory language which was challenged in the recent New York State Supreme Court case of *Lariviere v. The Pollock-Krasner Authentication Board*[21] and was upheld. The exculpatory language provided, in pertinent part:

> I agree to hold the Authentication Board and its directors and officers in their representative and individual capacities harmless from any liability towards me or others because of its rendition of an opinion (or its refusal to render any opinion).[22]

In *Lariviere*, as in at least one earlier case,[23] the court upheld the exculpatory language as it applied to negligence - but held that such language would not provide insulation from liability for willful acts or for acts of gross negligence. The court in *Lariviere* also noted that such exculpatory language would be deemed null and void "where a special relationship exists between the parties such that an overriding public interest demands that such a contract provision be rendered ineffectual."[24] That is, exculpatory language would generally not be effective insulation against liability in negligent misrepresentation.

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[20] The Board has since disbanded.

[21] *Lariviere v. E.V. Thaw, E.G. Landau, F.V. O'Conner, and W.S. Lieberman*, t/a The Pollock-Krasner Authentication Board, Inc., and The Pollock-Krasner Authentication Board, Inc., Index No. 100627/99 New York State Supreme Court, NY County, June 26, 2000. For a more extensive discussion of this case, see: Ronald Spencer, "A Legal Decision in New York Gives Experts Protection for their Opinions on Authenticity," in *IFAR Journal*, Vol. 3, no.2, 2000.

[22] *Id.* at 2.

[23] *Foxley v. Sotheby's*, Inc., 893 F. Supp. 1224 (SDNY 1995).

Qualifications and Depth of Experience

As noted earlier, the appropriate standard of care to which an expert will be held by the courts depends in part on the expert's qualifications and depth of experience. For example, if, in the letter of agreement or elsewhere, an expert asserts that he or she has special skills and knowledge about the artist Renoir and renders an opinion about the value or authenticity of, say, one of his outdoor cafe scenes, the expert must use care that is reasonable in the light of the expert's special knowledge. The expert may be found negligent, in view of such special knowledge, for rendering an erroneous opinion. On the other hand, an expert who does not specialize in Renoir per se but who does possess general knowledge of nineteenth century French Impressionist art – Renoir's historical period – might not, under the same circumstances, be found negligent for furnishing an erroneous opinion about the cafe scene if the expert's skill and knowledge were not misrepresented. An expert who claims to have less skill or knowledge than that normally possessed by other experts in the community is bound to exercise only that lesser level of skill or knowledge. An art expert who makes no representations about skills or knowledge is required to exercise the skill and knowledge normally possessed by other experts in the community.[25]

In addition to the letter agreement, the expert might want to consider obtaining through a trade association, for example, the Appraisers Association of America, errors and omissions insurance coverage. Generally such policies are consistent with case law in covering errors, omissions and acts of negligence, but not covering acts of dishonesty such as fraud, intentional omissions, and acts of bad faith.

If the expert adheres to these prescriptives – and common sense dictates that any expert should do so as a matter of course – then he or she should feel free to express opinions about artworks without fear of reprisal from the law.

[24] Supra, note 21 at 3.

[25] *See* Restatement (Second) of Torts sec. 299A.

TOP TEN THEFTS OF 2002/2003

SALVADOR DALÍ (Spanish, 1904-89). *Christ on the Cross*, February 1965. India ink, gouache, and pencil on board, 59" x 39½". *N03.78. (*IFAR Journal*, Vol. 5, no. 4, 2002/03, item no. 96). Prison personnel at the Men's Correctional Facility, Riker's Island, New York staged a middle-of-the-night fire drill on March 1, 2003 to steal this drawing and replace it with a fake. The work is still missing and is believed have been destroyed.

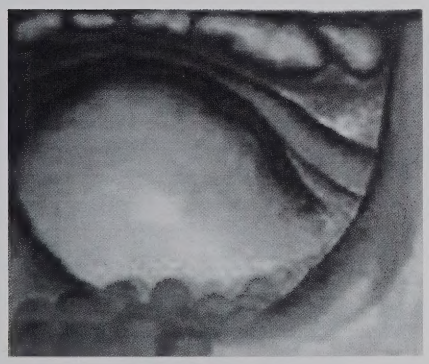
LEONARDO DA VINCI(?) (Italian, 1452-1519). *Madonna with Yarnwinder*, c.1501-1508. Oil on panel, 18¼" x 14". Collection of the Duke of Buccleuch & Queensbury, KT. *L03.931. (*IFAR Journal*, Vol. 6, no. 3, 2003, item no. 81). In a daytime robbery on August 27, 2003, two thieves entered Drumlanrig Castle, Scotland – home to the Duke of Buccleuch – held a guide at knifepoint, and pulled the painting off a wall. Police arrived 15 minutes later, after the thieves had escaped to a waiting car. The painting had been in the Duke's family since 1756.

JOHN J. AUDUBON (American, 1785-1851). *Female Turkey with Young*. Approx. 2½' x 3½'. u/r: "Plate VI NO II"; l/l: "Drawn from Nature by John Audubon, FRSE, MWS"; l/r: "Engraved by WH Lizars, Edin"; bottom center: "Great American Hen and Young"; "Vulgo Female Wild Turkey Meleangus Callapora."Hobcaw Barony. Georgetown, SC, July 31, 2003. *N03.193. (*IFAR Journal,* Vol. 6, no. 3, 2003, item no. 103). This print is one of 51 items stolen from Hobcaw House and Bellefield House, Georgetown, SC, the winter home of Belle Baruch, daughter of Bernard M. Baruch. The Belle W. Baruch Foundation has filed a suit alleging that the curator-in-residence for Hobcaw Barony, who reported the break-in to the police, removed the missing items.

BENVENUTO CELLINI (Italian, 1500-71). *Salt Cellar*, c.1540-44. Gold, enamel, and ebony. 26 x 33.5 cm. (*IFAR Journal*, Vol. 6, nos. 1&2, 2003, item no. 73). This piece was stolen on the night of May 11, 2003 from the Kunsthistorisches Museum, Vienna after thieves

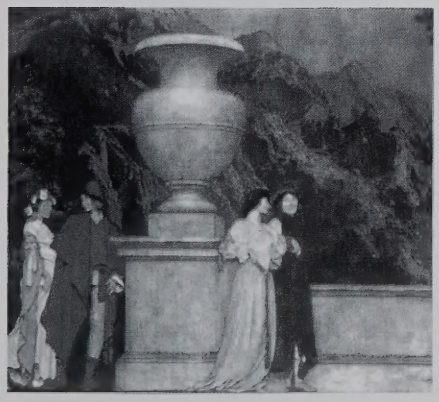
smashed a first-story window and then a display case, setting off an alarm that was ignored by security guards. The salt cellar, valued at $58,000,000, was created for the French King Francis I. It is the only extant gold object crafted by Cellini. A ransom letter demanding €5 million contained scrapings that match the salt cellar with 90 percent accuracy. But the ransomer has disappeared. The museum has set up a Website, www.thesaliera.com, about the theft.

CHARLES LE BASTIER (French, 18th century). *Snuffbox*, c.1765-66. Gold, enamel, and gouache. *L03.814. (*IFAR Journal*, Vol. 6, no. 3, 2003, item no. 77). This snuffbox is one of 130 pieces stolen on June 10, 2003 from Waddesdon Manor, England, a mansion built in the 19th century to display the collections of Baron Ferdinand de Rothschild. Three suspects were arrested in October on suspicion of aggravated burglary.



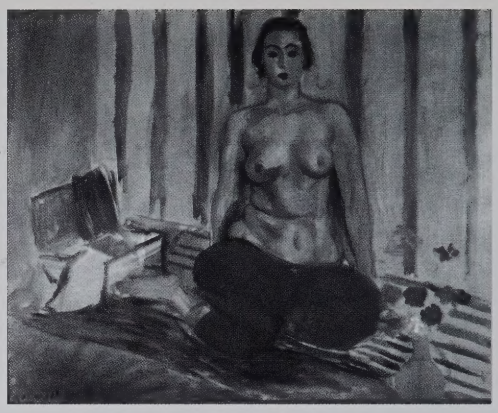
IVORY AND GOLD PLAQUE (Nimrud, c.720 BC). Depicting a lioness killing a Nubian. Base: 1 x 10.5 cm; Ht: 9.8 cm. Cat. #175, IM #56642. (*IFAR Journal*, Vol. 6, nos. 1&2, 2003, no. 3). Stolen/looted in April 2003 from the Iraq Museum, Baghdad, during Operation Iraqi Freedom.

GEORGIA O'KEEFFE (American, 1887-1986). *Special No. 21 (Palo Duro Canyon)*, 1916. Oil on canvas board. 13½" x 16½". *N03.264. (See inside back cover, this issue). Security guards at the Museum of Fine Arts in Santa Fe, NM discovered this painting missing on December 17, 2003. Investigators are offering a "substantial reward" for the painting, an early example of the artist's abstract work.

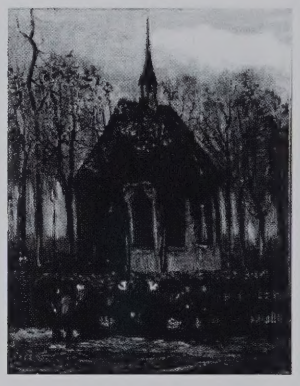


MAXFIELD PARRISH (American, 1870-1966). *Panel 3A of the Gertrude Vanderbilt Whitney murals*, 1914. Oil on canvas. 63 _" x 74". Signed. (*IFAR Journal*, Vol. 5, no. 2, item no. 4). Stolen along with another Parrish mural from the Edenhurst Gallery in Los Angeles, CA on July 28, 2002 after thieves cut a hole in the gallery's ceiling, disabled the alarms, and cut the murals from their frames.

HENRI MATISSE (French, 1869-1954). *Odalisque in Red Pantaloons*, 1925. 60.5 x 73.5 cm. Signed l/l: "Henri Matisse." © Succession H. Matisse / A.R.S. New York 2003. (*IFAR Journal*, Vol. 5, no. 4, 2002/03, item no. 78). This painting was discovered missing from the Museum of Contemporary Art, Caracas (MACCSI) in late 2002 after it had been replaced by a forgery.

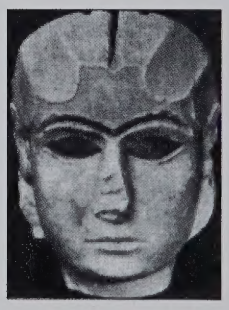


VINCENT VAN GOGH (Dutch, 1853-90). *Congregation Leaving the Reformed Church in Nuenen*, 1884. Oil on canvas. *L02.6943. (*IFAR Journal*, Vol. 5, no. 3, 2002, item no. 58). Stolen from the Van Gogh Museum in Amsterdam on December 7, 2002 along with another Van Gogh painting, *View of the Sea at Scheveningen*, 1882.



TOP TEN RECOVERIES OF 2002/2003

Head of a Sumerian Woman (Warka/Uruk, c.3000 BC). 21.5 cm. White marble. Cat. #21, IM #45434. (*IFAR Journal*, Vol. 6, nos. 1&2, 2003, item no. 1). Reported stolen from the Iraq Museum, Baghdad, in April 2003. Recovered on September 15, 2003.

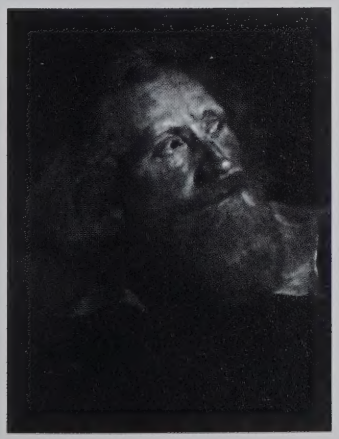


The Bassetki Statue. Hollow cast copper. With an old Akkadian Royal inscription of Naram-Sin of Akkad (2291-2255 BC) on the pedestal. The upper part of the seated person is missing. 34.5 x 13 cm. IM #77823. (*IFAR Journal*, Vol. 6, nos. 1&2, 2003, item no. 9). Recovered in November 2003.

CASPAR DAVID FRIEDRICH (German, 1774-1840). *Nebelschwaden*, c.1818-20. Oil on canvas. 32.5 x 42.4 cm. *L94.979. (*IFARreports*, Vol. 15, no. 9, Sept. 1994, item no. 531). This painting was stolen from an exhibition at the Schirn Kunsthalle in Frankfurt in July 1994 along with two paintings by J.M. W. Turner. One Turner, *Shade and Darkness*, was recovered July 2000. The other, *Light and Darkness*, was recovered last year. Both paintings were returned to the Tate Gallery, London. The Friedrich, recovered in August 2003, has been returned to the Hamburg Kunsthalle.

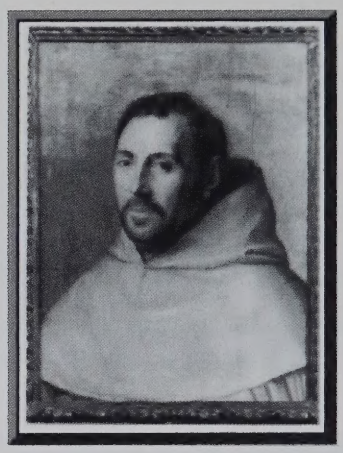
SIR LAWRENCE ALMA-TADEMA (English, 1836-1912). *Melody on a Mediterranean Terrace.* Oil on wood. 44.5 x 63.5 cm. *N83.339.9. (*Stolen Art Alert*, Vol. 4, no. 9, item no. 1140). Stolen along with other art in Jamaica, NY on July 12, 1983 from a truck en route to Sotheby's. Some items were recovered in 1987. In May 2003 a New York art dealer submitted the Alma-Tadema to a search of the ALR database and the painting was "matched."

MASTER OF THE POLYPTYCH OF ST. BENEDICT (Italian, early 16th century). *Madonna and Child with Saints.* Oil on panel, partially gilded. Ht: 190 cm. This polyptych, stolen on May 9, 1997 from the Church of St. Benedict, Angri, was listed by the Italian Ministry of Cultural Property as one of the 100 most important missing works. It was recovered by the Carabinieri of the Salerno province on September 25, 2002.



PETER PAUL RUBENS (Flemish, 1577-1640). *Portrait of Erycius Puteanus*, c.1651-30. Oil on panel. 52.1 x 41.9 cm. *86.200.10. (IFARreports, Vol. 7, nos. 5&6, item no. 634). One of 18 works stolen in 1986 from Russborough House, the estate of Alfred Beit in Ireland. Recovered by the Dublin police on August 7, 2002. Two works, both Guardi landscapes, are still missing. All the other works were found in various locations, from Britain to Turkey.

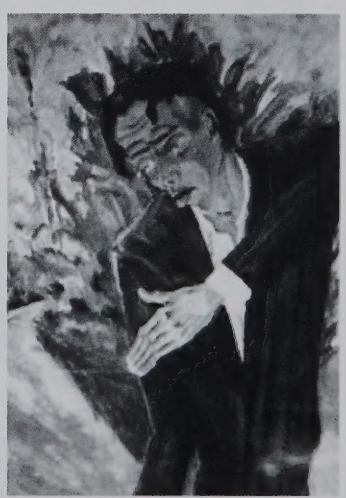
PETER PAUL RUBENS (Flemish, 1577-1640). *Portrait of a Dominican Monk*, c.1610. Oil on canvas. 58.1 x 45.7 cm. *86.200.9. (*IFARreports*, Vol. 7, nos. 5&6, item no. 633). This painting, one of five works stolen on September 2, 2002 from the Beit Collection, Russborough House, Ireland, was recovered along with the other four on December 20, 2002. A tip led police to a nearby home, where the works were stored. The thieves are still at large. This was the fourth theft in twenty years from Russborough House. *The Dominican Monk* had been stolen in a 1986 theft.



TITIAN (Tiziano Vecellio) (Italian, 1490-1576). *Rest on the Flight into Egypt*, 1510. Oil on panel. 18" x 24". *L95.80.1. (IFARreports, Vol. 16, no. 2, Feb/Mar 1995, item no. 166).Stolen from Longleat House, the Marquess of Bath's estate in Wiltshire, England, in January 1995. Recovered by Charlie Hill, a former member of Scotland Yard's Art and Antiques Squad, with the help of a convicted art criminal, David Duddin, in August 2002.

PETER BRUEGHEL, THE ELDER (Flemish, c.1525-69). *The Temptation of St. Anthony.* *L01.730. (*IFAR Journal*, Vol. 4, no. 2, item no. 53). This painting was one of 20 works of art stolen from the Madrid residence of Esther Koplowitz on August 8, 2001. In June 2002, the Spanish police, with help from the FBI, recovered ten of the paintings, including this one. In September 2002, the other ten works were found.

ERICH HECKEL (German, 1883-1970). *Roquariol.* *L02.28. This painting was one of nine German Expressionist works stolen in a burglary from Die Brücke-Museum in Berlin on April 20, 2002. The next month, police found the paintings stored in a Berlin apartment. Eight were undamaged, but one, Max Pechstein's *Young Girl*, had been slashed.



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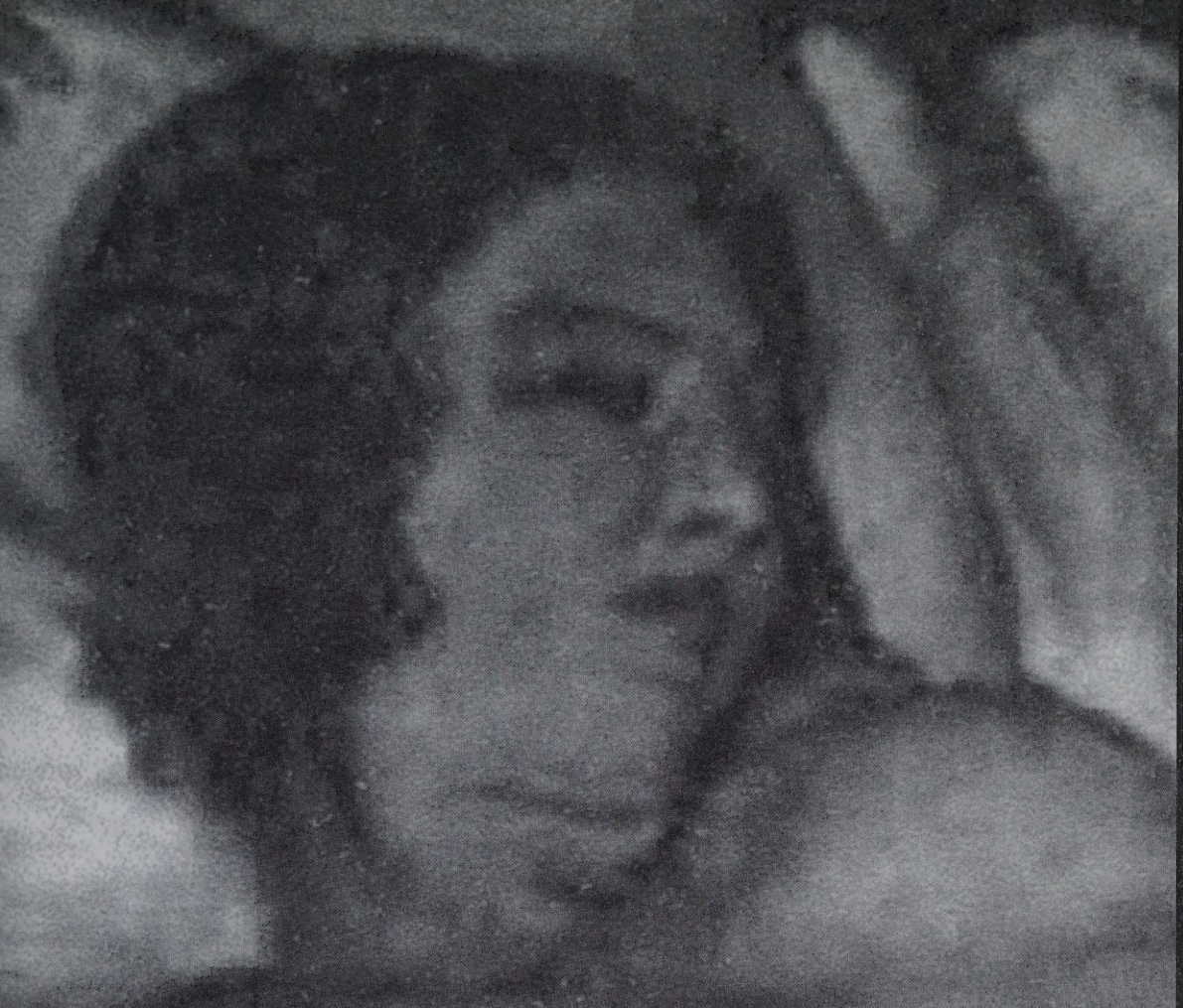

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The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

The information contained in each entry is supplied by the owner and insurance companies to the ALR, Interpol, and other registries, and IFAR does not accept responsibility for its accuracy.

Anyone wishing additional information should contact the ALR at 212.297.0941.

PAINTINGS

129 *Portrait of William Southmayd.* Oil on board. *N03.259. Stolen from a private residence.

130 JOSEPH HENRY SHARP *(American, 1859-1953). Jerry with Apache Bow and Arrows,* 1921. Oil on canvas, 20" x 14". *N04.24. Stolen from Nedra Matteucci's Fenn Galleries, Santa Fe, NM on January 28, 2003.

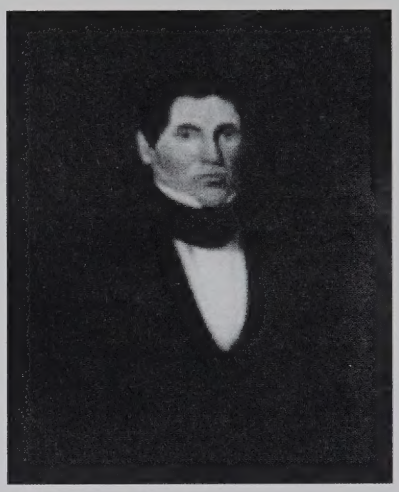
131 WILLIAM HENRY DAVIS (English, 19th century). *Fresian Cow in a Landscape.* Oil on canvas. *L03.1205. Stolen from a private resident in Kilingsbury, England on November 2003.

132 PIERRE-AUGUSTE RENOIR (French, 1841-1919) *Landscape.* See color photo on inside back cover.

133 GEORGIA O'KEEFFE (American, 1887-1986). *Special No. 21 (Palo Duro Canyon),* 1916. See color photo on inside back cover.

134 *Saint Mother Mary of Guadalupe.* Oil on canvas. *N03.252. Stolen from a church in Mexico.

135 MARC EEMANS (Belgian, 1907-98). *Le Pelerin de L'absolu* or *Autoportrait,* 1937. Oil on canvas. 92 x 73 cm. *N03.253. Lost in transit between June and November 2000. Reward by owner.



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137

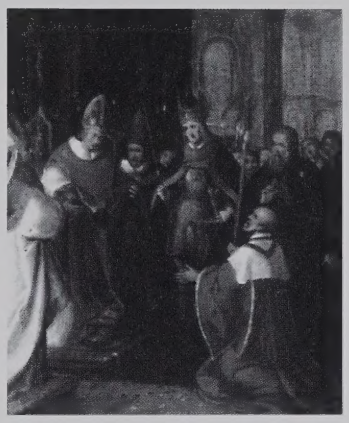
The following paintings were stolen from a dealer in London on August 9, 2003. *L03.1074:

PAIR OF CAPRICCHIOS:

136 *River and Bridge at Pedura.* 50 x 72 cm.

137 *River Brenta, bridge and the torre Di Ezzelino.* 50 x 72 cm.

138

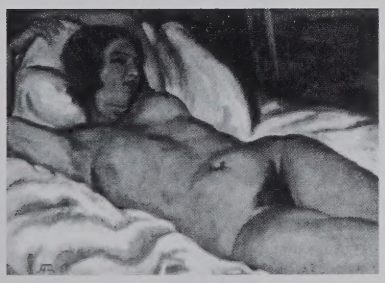


139

138 EDME-ADOLPHE FONTAINE (French, b.1814). *Portrait of a Lady.* Signed and dated 1851.

139 FRANS FRANCKEN II (Flemish, 1581-1642). *Charles V Shown the Holy Robe.*

140 ALEXANDR MURASHKO. *Nude with a Mediterranean Landscape.* Monogram in cyrillic l/l.



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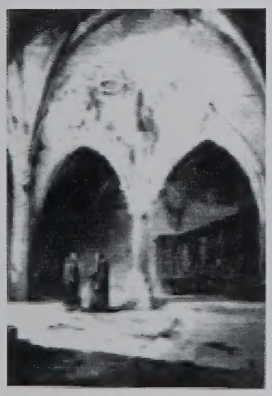
141

The following paintings were stolen from the Kromeriz Castle, Kromeriz, Moravia, the Czech Republic, on October 28, 1991. Interpol no. 20030811415:

141 HANS ROTTENHAMMER (German, 1564-1626). *Dancing Children*, 1600. 40 x 50 cm.

142 CARL VON SPITZWEG (German, 1808-85). *Cloisters in a Monastery*, 1850. 40 x 50 cm.



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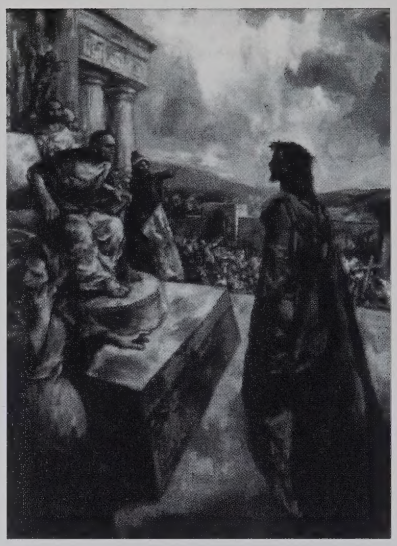
143

143 JAN BRUEGHEL THE ELDER (Flemish, 1568-1625). *Landscape with Conveyances.* Oil on canvas. 40 x 50 cm.

The following paintings by Ben Stahl (American, 1910-87) were among 15 stolen from the Museum of the Cross in Florida in 1967. Interpol no. 20031115973:

144 *Jesus is Condemned to Death*, c.1950-60. Oil on canvas. 9'x 6' (274.3 x 182.8 cm).

145 *Jesus Takes Up the Cross*, c. 1950-60. Oil on canvas. 9' x 6' (274.3 x 182.8 cm).



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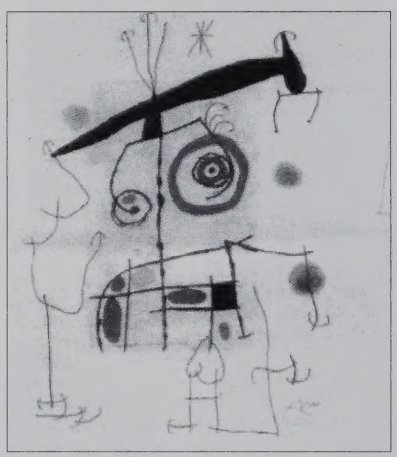
145

PRINTS, LITHOGRAPHS, ETCHINGS

146 JOAN MIRÓ (Spanish, 1893-1983). *L'Homme du Balance.* Lithograph. Ed. 1969. 19" x 22". Stolen from an estate in Texas.

147 ANDY WARHOL (American, 1928-87). *Tomato Soup Can*, c.1978. Screenprint on paper. 23" x 18". *No3.266. Missing from a gallery storage facility.



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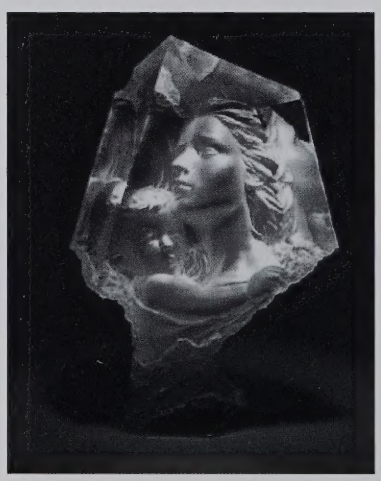
147

SCULPTURE

148 MICHAEL WILKINSON (American, 20th century). Two casts (#257 and #309) of the multiple *Haven II – Morning Light* (Acrylic. Ht: 21". Wt. 50lbs.) (*No3.260) were stolen from an art gallery in California. (Sculpture in photo is not one of the stolen ones. It has the same title but a different number in the edition.)

149 *Body of lion with human head* (Mexican, 16th century). *No3.267. Stolen in Ixtapaluca, Mexico. Part of the Mexican historical heritage. Interpol no. 20030912699.



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149

150

151

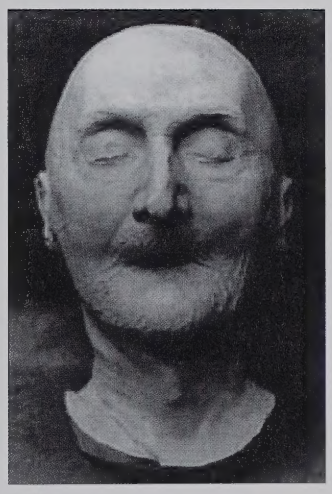
150 *Angel* (Czech, 18th century). Limestone. Ht.: 80 cm. Stolen from the sculpture complex of St. John of Nepomuk, Ostrovacice, the Czech Republic on May 16, 2002. Interpol no. 20030811093.

The following two statues by Eric Bohumir (Czech, 18th century) were stolen from a cemetery in the Czech Republic between June 6 and 7, 2001. Interpol no. 20030912202:

151 *Obstinacy* (Allegory). Ht: approx 80 cm.

152 *Cruelty* (Allegory). Ht: Approx 100 cm.

152



153

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153 *Death Mask of J.M.W. Turner* (English, 19th century). *L02.7102. Stolen from the Royal Academy of Arts, London sometime before February 2002.

The following two sculptures were stolen from the yards of private residences in Naples, FL between the months of July and August 2003. Interpol no. 20031014094:

154 *Ballerina.* Ht: 144.8 cm. Wt: Approx. 90 kg. Inscriptions: #6 of 18, possibly signed.

155 *Alligator.* Ht: Approx. 200 cm. Wt: 68 kg. Inscriptions: #3 of 5, possibly signed.

154

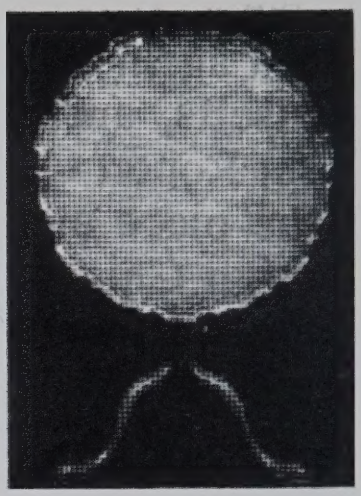
155

DECORATIVE ARTS

Silver

156 TANKARD (Swedish, 17th century). Silver with gold inlays and three scroll feet. Inscription on lid includes the date 1799 and underneath, 1673. *L03.1165. Stolen from a private residence in Kingston-upon-Thames, England in October 2003.

156



157

Furniture

157 GEORGE III STYLE TILT-TOP TABLE. Mahogany. Ht.: 27". D: 29". *N03.265. Stolen from an antiques dealer in Ottawa, Ont., Canada.

158 DESK (English, late 17th century). With marquetry floral inlay and six legs. *L03.1165. Stolen from a private residence in Kingston-upon-Thames, England in October 2003.

158

MISCELLANEOUS

Maps

The following antique maps were stolen in Finland between February 23 and 26, 2001. Interpol no. 20010302783:

159 *America Septentrionalis*. Map of North America. 463 x 552 mm. From: Johannes Janssonius, *Novius* Atlas, Amsterdam 1645. The catalog of maps of Nordenskiold nr. 114. Signum: N 1510.III.k78.

159

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160 *Americae Nova Tabula.* Map of America. 409 x 553 mm. From: Joan Blaeu, *Atlas Maior*, Vol. XI America, Amsterdam 1662. The catalog of maps of Nordenskiold nr. 24. Signum: N:2556.XI.k1.

161 *Nova Belgica et Anglia Nova.* Map of New England. 385 x 502 mm. From: Joan Blaeu, *Atlas Maior*, Vol. XI America, Amsterdam 1662. The catalog of maps of Nordenskiold nr. 24. Signum: N.2556.XI.k4.

162 *Nova et Accuratissima Totius Terrarum Orbis Tabula.* See color photo on inside back cover.

163 Incunabula World Map. 396 x 545 mm. From: Claudius Ptolemaeus, Cosmographia, Venetia 1486. Signum: Ink.3.k.1.

MISSING PAINTINGS

The following two paintings by JESS (American, 1924-2004) disappeared from Odyssia Gallery in New York between December 10, 1998 and November 3, 2003. *N04.35:

2 *Ex. 1 Laying a Standard: Translation #1*, 1959. See color photo on inside back cover.

3 *Kitkat: Imaginary Portrait* #12, 1955. Oil on canvasboard. 18" x 14". (Photo not shown.)

RECOVERED ART

15 Sir Lawrence Alma-Tadema (English, 1836-1912). *Melody on a Mediterranean Terrace.* See color photo on inside back cover.

The following five carved ivory cameos by David Le Marchand (French, 1674-1726) were stolen while on loan to the Art Gallery of Ontario on January 18, 2004 and recovered on January 31, 2004.

16 *Portrait of Sir Isaac Newton*, c.1710. Ivory. Ht: 7¾" (19.5 cm). Artist's inscription along bottom.

17 *Portrait of Christopher Wren, Jr.*, c.1700-20. Ivory. Ht. 5½" (11.4 cm). Artist's inscription bottom center.

18 *Portrait of Charles Mordant*, c.1704-13. Ivory. Ht: 8½" (21.6 cm.). Artist's inscription bottom center.

19 *Portrait of a Woman and Her Daughter with a Whippet*, c.1710. Ht: 7½" (12.7 cm). Artist's inscription lower left.

20 *Portrait of Sir Humphrey Morice*, c.1716-20. Ivory. Ht: 5½" (11 cm). Artist's inscription verso.

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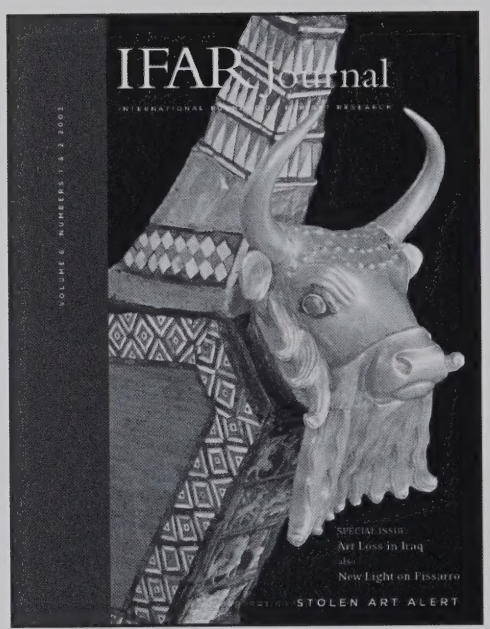

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STOLEN ART

132 PIERRE-AUGUSTE RENOIR (French, 1841-1919) *Landscape.* Oil on canvas. 12¼" x 8". *N03.263. Stolen from a private residence in New York.

133 GEORGIA O'KEEFFE (American, 1887-1986). *Special No. 21 (Palo Duro Canyon)*, 1916. Oil on canvas board. 13½" x 16¼". *N03.264. Stolen from the Museum of Fine Arts, Santa Fe, NM on December 16, 2003.

162 *Nova et Accuratissima Totius Terrarum Orbis Tabula.* From: Joan Blaeu, *Atlas Maior*, Vol. XI America, Amsterdam 1662. The catalog of maps of Nordenskiold nr. 24. Signum: N.2556.I.k1. Stolen in Finland between February 23 and 26, 2001 along with item nos. 159-61, 163, see pp. 51-52. Interpol no. 20010302783.

MISSING ART

2 JESS (American, 1924-2004). *Ex. 1 Laying a Standard: Translation #1*, 1959. Oil on canvas. 23½" x 15". *N04.35. Disappeared from Odyssia Gallery in New York between December 10, 1998 and November 3, 2003 along with item no. 3 on p. 51, this issue.

RECOVERED ART

15 SIR LAWRENCE ALMA-TADEMA (English, 1836-1912). *Melody on a Mediterranean Terrace.* Oil on wood. 44.5 x 63.5 cm. *N83.339.9. Stolen in Jamaica, NY on July 12, 1983. Recovered in May 2003. (See p. 41.)

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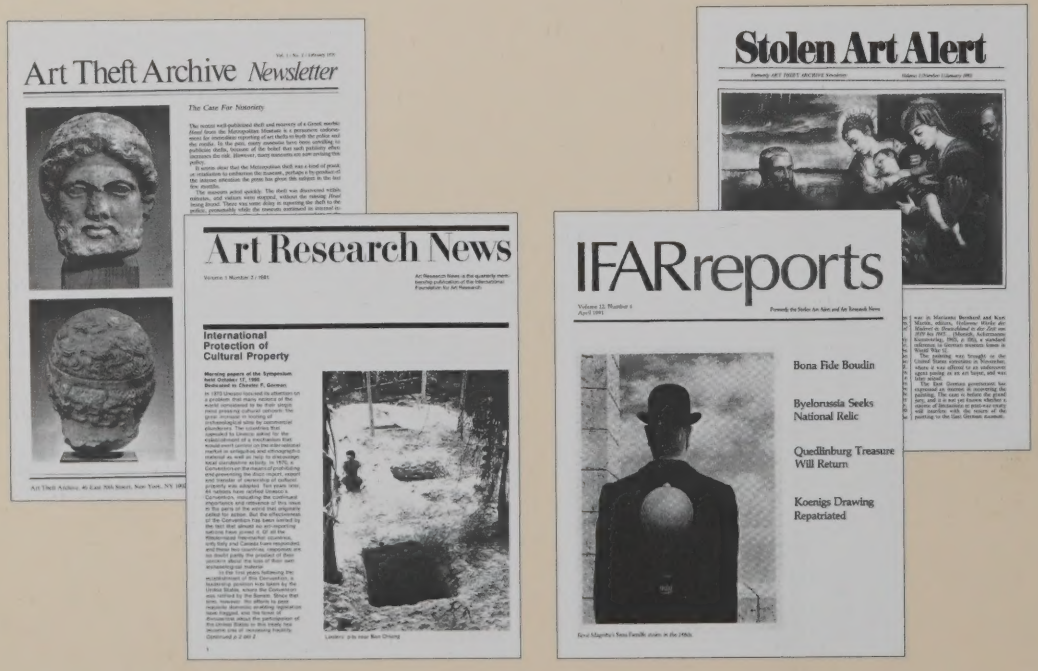

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